

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

THE UNITED STATES OF AMERICA,

plaintiff,

versus

3:21CR42

KEITH RODNEY MOORE,

defendant,

Before: HONORABLE JOHN A. GIBNEY, JR.  
United States District Judge

Motions hearing (continued)

October 28, 2022

Richmond, Virginia

GILBERT F. HALASZ  
Official Court Reporter  
U. S. Courthouse  
701 East Broad Street  
Richmond, VA 23219

APPEARANCES

Shea Matthew Gibbons, Esq.

Erik Sean Siebert, Esq.

Assistant United States Attorneys  
for the United States

Laura Jill Koenig, Esq.

Amy L. Austin, Esq.

Assistant Public Defenders  
for the defendant

The defendant in his own proper person

1           THE CLERK: Case number 3:21 CR 42.

2           The United States versus Keith Rodney Moore.

3           Mr. Shea Gibbons, Mr. Erik Siebert represent the  
4 United States.

5           Ms Laura Koenig and Ms Amy Austin represent the  
6 defendant.

7           Are counsel ready to proceed?

8           MR. GIBBONS: United States is ready to proceed.

9           MS KOENIG: Defense is ready, Your Honor.

10          THE COURT: Good morning.

11          Say something in the microphone.

12          MR. GIBBONS: Yes, Your Honor.

13          THE COURT: Making sure both my speakers are  
14 working.

15          THE CLERK: They came and fixed it.

16          THE COURT: We are here today for the continuation  
17 of the case hearing on the motion to suppress in United  
18 States versus Keith Rodney Moore.

19          Good afternoon Mr. Siebert, Mr. Gibbons, Ms  
20 Koenig, and Ms Austin, and Mr. Moore.

21          Good to see all of you today. I think where we  
22 are is that you are prepared to call your next witness.

23          MS KOENIG: I am, Your Honor.

24          THE COURT: So there is a motion in limine or  
25 Daubert motion on Dr. Chiles. And the essential

1 element of the motion is that it is not very helpful to  
2 The Court because Dr. Chiles is going to testify about  
3 historic patterns in Richmond. So what I will be  
4 looking for -- and there is something to be said for  
5 that position -- and one of the things that we are  
6 looking for today would be evidence that he ties that  
7 together. I think in order to rule on the Daubert  
8 motion I pretty much have to hear the testimony. So I  
9 will hear that and see what Dr. Chiles has to say and  
10 what you have to say about tieing that into the present  
11 situation in Richmond.

12 MS KOENIG: Thank you, Your Honor.

13 Before we start with that with Dr. Chiles, we  
14 have, each side has a hand full of a couple of  
15 exhibits.

16 THE COURT: Hand full of a couple exhibits.

17 MS KOENIG: Hand full. I corrected myself. A  
18 couple, not really a hand full.

19 THE COURT: I'm sorry to hear your child is ill.

20 MS KOENIG: He is not feeling great, so I don't  
21 want to pass anything on to anybody else.

22 The Government has Government's six and seven that  
23 should be before The Court.

24 THE COURT: Okay. So what we have here are  
25 Government's exhibits six and seven. I have actually

1       five, six and seven here. Five looks like a real old  
2 book of some kind.

3           MS KOENIG: I understand that the Government will  
4 be trying to introduce exhibit five through Dr. Chiles  
5 on cross examination.

6           THE COURT: All right. Are six and seven coming  
7 in without objection?

8           MS KOENIG: Correct.

9           THE COURT: Okay. Mr. Gibbons, why don't you tell  
10 me what -- Mr. Siebert, either one -- what six and  
11 seven are here.

12          MR. GIBBONS: Your Honor, these are maps that are  
13 similar to those that we inserted into our motion to  
14 exclude, our second motion to exclude Dr. Chiles.  
15 These are maps that come from an open source web site  
16 that is run by Lexis Nexis, and really what this is,  
17 just, this is all of the homicides and manslaughters in  
18 the City of Richmond.

19          THE COURT: Okay.

20          MR. GIBBONS: There is -- you can see the  
21 precincts kind of outlined. It is A little difficult  
22 to see. You will see better on the defense exhibits  
23 that shows just the precincts.

24          Government's exhibit six, the dates for this are  
25 January 1st, 2018.

1           THE COURT: Through when?

2           MS KOENIG: 12/6/20, the day after the stop at  
3 issue.

4           THE COURT: Okay.

5           MR. GIBBONS: And Government's exhibit seven is  
6 1/1/99, 1999. That is the first year for which data is  
7 available from RPD.

8           THE COURT: Okay.

9           MR. GIBBONS: To 12/6/20 as well.

10          THE COURT: Okay.

11          All right. And what do these black dots show on  
12 here?

13          MR. GIBBONS: That is homicide or manslaughter.

14          THE COURT: Okay. Okay.

15          All right. Thank you.

16          MR. GIBBONS: That is all I have, Your Honor.

17          Thank you.

18          MS KOENIG: Then, Your Honor, the parties are also  
19 stipulating to defense exhibit 20, which should be  
20 before Your Honor, which is the same underlayment of  
21 the map that the Government has introduced in exhibit  
22 six and seven, but without the dots. It is labeled  
23 with the various precinct numbers, three, four, one and  
24 two. Clockwise order.

25          THE COURT: All right.

Chiles - direct

7

1           So, apparently there is no objection to exhibit  
2        20.

3           MR. GIBBONS: No, Your Honor.

4           THE COURT: All right.

5           So I will admit then exhibits, Government's  
6        exhibit six and seven and defense exhibit 20. And then  
7        I have here also defendant's exhibit 19 which I guess  
8        will come in through the professor.

9           MS KOENIG: It is, Your Honor.

10          THE COURT: Okay. All right.

11          Let's get the show on the road.

12          MS KOENIG: At this point I am ready to call  
13        Dr. Chiles.

14          THE COURT: All right.

15          THE COURT: Come on up, Dr. Chiles.

16                   MARVIN CHILES

17                   AFFIRMED AND TESTIFIED AS FOLLOWS:

18                   DIRECT EXAMINATION

19        BY MS KOENIG:

20        Q      I do want to confirm that The Court still has the  
21        binder of defendant's exhibit that we had provided to  
22        The Court at the last hearing or last set of hearings.  
23        That could go one through 18, and then have some copies  
24        of previously admitted exhibits.

25          THE COURT: All right. I don't have those with me

Chiles - direct

8

1 but we can those. I don't have it here with me, but we  
2 will get him started while she is getting those.

3 MS KOENIG: Absolutely, Your Honor.

4 THE COURT: We can move ahead.

5 BY MS KOENIG:

6 Q Can you state your name for the record, please?

7 A Marvin Chiles.

8 Q You can straighten that out. It should catch you.

9 You are good.

10 A Marvin Chile's.

11 Q Very good. Speak clearly. Good to go?

12 A Yes.

13 Q Dr. Chiles, can you spell your name for the  
14 record, please?

15 A M-A-R-V-I-N C-H-I-L-E-S.

16 Q Dr. Chiles, do you hold a series of degrees?

17 A Yes.

18 Q Tell us about those.

19 A I have a bachelors, a masters, and a PhD.

20 Q The PhD is what specifically in.

21 A African-American history.

22 Q And where odd you get that from.?

23 A University of Georgia.

24 Q When?

25 A 2020.

Chiles - direct

9

1 Q What is your masters in?

2 A American history.

3 Q From where.

4 A James Madison.

5 Q When did you will get that?

6 A 2016.

7 Q What is your current -- what do you do --

8 THE COURT: Let's go the whole way. Where did you  
9 get your un-graduate?

10 THE WITNESS: Liberty University.

11 THE COURT: Liberty University. Okay.

12 BY MS KOENIG:

13 Q When did get that?

14 A 2014.

15 THE COURT: And your major?

16 THE WITNESS: Social science educations.

17 THE COURT: Okay. Great. Thank you.

18 BY MS KOENIG:

19 Q What do you to for work now.

20 A Assistant Professor at Old Dominion University.

21 Q Is that a tenure track position?

22 A Yes.

23 Q What are you an assistant professor in?

24 A African-American history.

25 Q Do you have a speciality research area?

Chiles - direct

10

1 A Yes. Race, politics in the 20th century, but  
2 specifically in Richmond. So I focus on that now.

3 Q How long have you been studying history of race  
4 and politics in Richmond?

5 A Since 2014.

6 Q Have you published articles that require  
7 specialized knowledge on history of race and politics  
8 in Richmond?

9 A Absolutely.

10 Q Are some of those articles listed in your CV?

11 A Yes.

12 MS KOENIG: Your Honor, we have submitted this as  
13 a different exhibit nine, Dr. Chiles' CV.

14 THE COURT: Okay.

15 MS KOENIG: Move to admit it at this point.

16 THE COURT: Well, all right.

17 BY MS KOENIG:

18 Q Have you given presentations that required  
19 specialized knowledge of race and history in Richmond?

20 A Yes.

21 Q Have you also taught courses at ODU that involve  
22 the history of race and politics in Richmond?

23 A Yes.

24 Q Do you hold position of peer-reviewer of articles  
25 that others published that require use of your

Chiles - direct

11

1 specialized knowledge of the history race and politics  
2 in Richmond?

3 A Yes.

4 MS KOENIG: We move to qualify Dr. Chiles as an  
5 expert in the area of history race and politics in  
6 Richmond, Your Honor.

7 THE COURT: All right.

8 MR. GIBBONS: No objection, Your Honor.

9 BY MS KOENIG:

10 Q Dr. Chiles, I want to show you -- and Ms Tuck, if  
11 I could have access to pulling an exhibit up on the  
12 screen, please. And thank you.

13 THE COURT: You are doing what?

14 Q I just want to pull up an exhibit up on the screen  
15 that has already been admitted.

16 I guess while we are waiting for that to be pulled  
17 up, if you look in that white exhibit book in front of  
18 you and flip to the tab that says R 2. It is going to  
19 be towards the very end?

20 A Oh.

21 MS KOENIG: Your Honor, this has already been  
22 admitted at an earlier hearing in this case. It was  
23 previously identified as the racial dot map that the  
24 University of Virginia's Weldon Cooper School for  
25 Public Service generated using census data from 2010.

Chiles - direct

12

1           THE COURT: Which exhibit is it?

2           MS KOENIG: R 2, Your Honor, towards the end of  
3 the exhibit book. Here it is on the screen now.

4           THE COURT: R 2.

5           MR. SIEBERT: It is in the exhibit book, Your  
6 Honor.

7           THE COURT: What do you mean R 2?

8           MR. SIEBERT: One through 18 is the beginning, and  
9 then we have --

10          THE COURT: Oh, okay.

11          Okay, what is Dr. Chiles' resume?

12          MS KOENIG: It is defendant's exhibit nine, Your  
13 Honor.

14          THE COURT: Okay. Thank you. Go ahead.

15          BY MS KOENIG:

16          Q      Dr. Chiles, we can see blue dots in R 2 reflects  
17 white people, right?

18          A      Yes.

19          Q      And we can see that the green dots in exhibit R 2  
20 reflect black people, right?

21          A      Yes.

22          Q      I want to talk with you now about the history of  
23 how those dots got to be where they are.

24          Let's start with where black persons lived in  
25 comparison with white persons before slavery ended.

1       A     Before slavery ended, so the majority of free  
2     black people in Richmond lived in what is now Jackson  
3     Ward. And also the Shockoe Slip area. So those are  
4     the two places that they lived.

5              The Jackson Ward area was seen as the outskirts,  
6     or was the outskirts of Richmond just because the City  
7     size was so small geographically. And, yeah, that is  
8     where they lived.

9              White people lived pretty much wherever they  
10    wanted, but by and large working class, middle class  
11    white people lived in the near west end or what is  
12    today the near west end, Oregon Hill area, Carillon,  
13    area. And, yeah, right. Live in the southern part of  
14    Richmond, so, yes, they pretty much lived segregated  
15    lives before slavery ended.

16           THE COURT: And in those days the southern side of  
17    the river was part of the City.

18           THE WITNESS: No, no, not below the river towards  
19    Manchester. That was a different place. That got  
20    annexed later on. But the southern end going westward.  
21    So near the northern part where nowadays Jackson Ward  
22    is, out going kind of east is where black people lived.  
23    They were, they lived at, they lived in those places  
24    primarily because of insurrection laws that had been  
25    passed in the early 18 hundreds, really in response to

Chiles - direct

14

1     Gabriel's Rebellion. And so whites were afraid, many  
2     of them were afraid if they associated with free blacks  
3     in any way, and slaves, in any that suggested that they  
4     were, that they were warm to each other, that I could  
5     be accused of helping to insight insurrection.

6                 So, white and blacks primarily lived in separate  
7     places in Richmond prior to slavery ending.

8     Q     Specifically had Virginia and the City of Richmond  
9     passed laws in ordinances to order that?

10    A     Yes.

11    Q     Can you tell us about what the common said law in  
12    1806?

13    A     Yes. So they passed, they passed laws to, one  
14    organize police forces, or what do you call them, not  
15    necessarily, law enforcement in general. That was to  
16    surveil free slaves and slaves and to just insure that  
17    they did not travel throughout the areas without  
18    supervision.

19                 And, yeah, the Commonwealth of Virginia did. And  
20    Richmond itself as a city, they did it later on. But  
21    the point was to make sure that black people couldn't  
22    roam around free without supervision of whites.

23    Q     Did the Richmond City council also pass an  
24    ordinance concerning Negroes?

25    A     Yes.

Chiles - direct

15

1 Q Is that what you were referring to --

2 A Yes.

3 Q -- when you said that you were, they were barred  
4 from moving freely?

5 A Yes.

6 Q After the civil war ended in 1865 what started  
7 happening in the City of Richmond?

8 A So immediately after, for one, there was a bumper  
9 crop of free people, obviously slavery no longer  
10 exists, so local police in Richmond began to crack down  
11 on free black mobility. So they just started arresting  
12 black people indiscriminately, throwing them in what  
13 was then called Negro Bullpens, which were just open  
14 air cells. People could like walk by and throw stuff  
15 at them and taunt them. And the point was to kind of  
16 let former slaves know, hey, just because you are free  
17 legally, you are not free actually.

18 It got to the point to where blacks, blacks in  
19 Richmond wrote letters to President Andrew Johnson  
20 actually asking for him to intervene. And surprisingly  
21 he did. And kind of ended that practice of just  
22 indiscriminately incarcerating free black people for  
23 just things like not moving off of the sidewalk when  
24 white walk by or not referring to a white person by,  
25 you know, Mr. or Mrs. and things like that.

Chiles - direct

16

1           So, yes, that happened in the immediate aftermath  
2       of the civil war in Richmond. So, yes. Hope that  
3       makes sense.

4   Q     Did the City also start annexing territory?

5   A     Yes. Yes.

6   Q     Before we get too far, I want to who you what is  
7       marked as defendant's exhibit 19. Do you recognize  
8       what is in defendant's exhibit 19?

9   A     Yes.

10   Q    Can you tell us briefly what this is?

11   A    Yes.

12       So, sorry, this is a map of Richmond as a City and  
13       how it grows going into 20th century, and annexations  
14       they used to grow.

15   Q    Did you personally prepare this map?

16   A    No.

17   Q    Have you reviewed it for its accuracy in terms of  
18       the knowledge that you have about the annexation?

19   A    Yes. Every map I have seen of Richmond, all of  
20       the annexation maps all look like this.

21   Q    So is it a fair and accurate representation of  
22       what the various annexations looked like over time in  
23       Richmond.

24   A    Yes.

25       MR. SIEBERT: I move to admit defendant's exhibit

1 19.

2 MR. GIBBONS: No objection.

3 THE COURT: Admitted.

4 BY MS KOENIG:

5 Q So let's talk about annex. Where did the City  
6 start annexing territory initially?

7 A Initially, just surrounding -- sorry -- so  
8 initially just surrounding the City. So right and  
9 left, right, and left and right, east and west, rather.  
10 And then they began to expand and further in a circle  
11 in essence around the City. That is because the  
12 population continued to grow after the civil war. More  
13 people are moving to Richmond, black and white. So,  
14 yes, the annexing s much territory as possible just to  
15 accommodate for the population growth.

16 Q After the civil war did the City of Richmond and  
17 the State of Virginia continue to enact laws to enforce  
18 racial segregation and say where black people could  
19 live or not live?

20 A Yes. So that's one of the biggest issues where  
21 the City is growing at that time period was that people  
22 were concerned with the races mixing in any way that  
23 could suggest equality. And also it was seen as  
24 improper for cities to not have more organized growth.

25 So by the early 20th century the Commonwealth of

Chiles - direct

18

1     Virginia, as well as the City -- and it wasn't just  
2     Richmond in Virginia, it was other places as well --  
3     began to pass laws and ordinances to restrict the races  
4     from interacting in certain spaces. So where they  
5     could live, where they could travel, where they could  
6     go. If they did have to share space how they could  
7     share that space. So blacks would have this side,  
8     whites that would have this side, et cetera, et cetera.

9     Q     In 1911 -- well before the State and the City  
10    started segregating residences more formally, was there  
11    a segregation of transits?

12    A     Yes. Segregation of transit, it was more, it was  
13    more, it was more so allowed private carriers or  
14    carriers that provided public services to do it. In --  
15    by 1904 they allowed them to do. So they say, hey, we  
16    are encouraging you to begin to segregate because this  
17    is something that other states are doing, other  
18    localities are doing. And a lot of push back was, a  
19    lot of push back with respect from whites and blacks,  
20    mostly black people because the segregation would mean  
21    they would get worse services.

22           But by 1906 it was mandatory. So if you provided  
23    rail cars or street car access you would have to have  
24    it on a segregated basis. So separate cars. And then  
25    different cars and tracks would go to different sides

1       of town. To just kind of reinforce that, hey, although  
2       slavery is no longer here, segregation will be here to  
3       replace it.

4       Q       So let's talk about where in the City of Richmond  
5       that played out. Where did the black cars for transit  
6       go in the City of Richmond?

7       A       Mainly down town. Down town to the Shockoe Slip  
8       area because that is where black people lived. Yes.  
9       So mainly down town. What we now see as downtown. And  
10      going kind of towards the Jackson Ward area. Because  
11      that is where black people lived, and they worked in  
12      the interior in the core of the City.

13           And the white cars would go out to what is now  
14      like the far west end, not as far as it is today, but  
15      the furthest that was west end. Because that was a  
16      newly expanded suburban area. Same thing with parts of  
17      north side. Up near the Ginter Park area which were  
18      numerous suburban street car, or considered to be  
19      street car type of areas. So, yes, that is where they  
20      would go.

21       Q       Were blacks allowed to ride on white cars?

22       A       Only if they worked for white families. Or if  
23      they had like special passes of some sort. So hey, I  
24      am going to go to this neighborhood or this business  
25      on this side of town to go work for this firm or this

Chiles - direct

20

1 family. Usually the maids of wealthy white people  
2 would get a pass.

3 Also, sometimes workers who would go to work for  
4 white businesses in other parts of town, like  
5 construction, and things like that. But by and large  
6 no, for leisure you are not getting on the white car to  
7 go out to the west end. That is just not going to  
8 happen.

9 Q By 1911 was there an official segregation law on  
10 the books that then officially segregated residential  
11 areas in the City of Richmond?

12 A Yes.

13 Q Tell us about that.

14 A So that law came about as a result of middle class  
15 black people, one in particular, simply buying property  
16 in white neighborhoods. And before some black people  
17 would buy property in white neighborhoods and rent them  
18 out to white people. So no harm, no foul, right.  
19 However, by the time we get to the the 1910s some,  
20 thinking of one in particular, bought property in white  
21 neighborhoods, and they began to put black renters  
22 there.

23 And then also that same person tried to establish  
24 a business in a white neighborhood. And there was a  
25 push back, John Mitchell is who I am referring to, the

1 newspaper editor, and as a result of that the  
2 segregation ordinance, City council brought that into  
3 play and eventually enacted it. And the goal was to  
4 make sure that blacks and whites resided exclusively in  
5 neighborhoods that were already, already a majority of  
6 that race, or pre-determined to be a majority of that  
7 race. So this neighborhood, for instance, was majority  
8 white for the last 40 years. No black person could  
9 not -- could not live there.

10       Same thing for whites. Excuse me. Whites going  
11 into black neighborhoods. If this neighborhood was  
12 black in the last 40 or 50 years whites couldn't just  
13 go and live there. They could buy property there.  
14 That they could not stop, City Council could not stop,  
15 but they could not live there.

16 Q      Was that law challenged as unconstitutional?  
17 A      Yes.

18 Q      Was that in the City, Hopkins versus the City of  
19 Richmond case?

20 A      Yes.

21 Q      Tell us that case.

22 A      So it was a black woman who was, a black woman and  
23 a white man who were arrested for violating that rule  
24 because they shared space in the same house in a white  
25 part of town. I suspect that they might have been

Chiles - direct

22

1       lovers, but they claim they were just room mates.  
2       Needless to say a black attorney and a white attorney  
3       teamed up to challenge that law on the grounds that it  
4       violated the 14th amendment.

5           And they lost. And because they lost that case --  
6       and then they lost not just here locally, they also,  
7       when they appealed, and because of that the NAACP got  
8       involved, which was kind of an upstart organization at  
9       the time. And when they did get involved eventually  
10      they were able to overturn how the segregation in  
11      Richmond from a legal standpoint by late 1920s early  
12      1930s.

13     Q     Did the Supreme Court specifically outlaw the  
14     practice that Virginia and Richmond had enacted in  
15     Buchanan versus Royal in 1917?

16     A     Yes.

17     Q     But did that stop Richmond and Virginia from  
18     trying to continue segregating residences?

19     A     No, not at all.

20     Q     You talked about 1920s, 1930s. Is that the case  
21     that we are talk about, Benjamin Deem's case?

22     A     Yes.

23           So Benjamin Deems was, I believe, an insurance  
24     agent. Don't quote me on that. But he was hired,  
25     excuse me, wasn't hired, he was approached by attorneys

1 who tried to overturn segregation originally with  
2 Hopkins versus Richmond. They told him to buy a home  
3 in a white neighborhood. And then to occupy it. That  
4 is what he did. Of course, he was slapped, not  
5 slapped, but arrested, fined, and that is when he  
6 challenged it in court and eventually he won. So, yes,  
7 it was challenged by Benjamin Deems who, again, did it  
8 on purpose. The goal was to try to get the law taken  
9 off the books.

10 Q Have you talked about these -- have you written  
11 about these events?

12 A Yes.

13 Q Specifically, did you write about these events in  
14 your article called Down Where the South Begins?

15 A Yes.

16 Q Flip in the exhibit book to defendant's exhibit  
17 ten, which is going to be halfway through.

18 A Got it.

19 Q Do you recognize what is in defendant's exhibits  
20 ten as an article Down Where the South Begins?

21 A Yes.

22 MR. SIEBERT: Judge, I move to admit defendant's  
23 exhibit ten.

24 MR. GIBBONS: No objection; however, we have an  
25 ongoing objection to relevance. We hope we get to the

Chiles - direct

24

1 recent history quickly, Your Honor.

2 THE COURT: Well, I share your hope.

3 BY MS KOENIG:

4 Q What other steps did the City of Richmond, aside  
5 from laws and ordinances, take to enforce residential  
6 segregation in the 1930s 1940s?

7 A Yes, a few things. It was for one, a newer  
8 emphasis on city planning. So The Greater Richmond  
9 Plan and later would be the master plan, these were  
10 City plans that were adopted by the City council, then  
11 eventually later the Housing Authority, Richmond  
12 Housing Authority, which would come about in the 1930s.  
13 And their goal was to better organize the City of  
14 Richmond like other cities throughout the country. So  
15 they did this through two things. One of the main  
16 objectives of that was to remove black people from the  
17 core of the City. Remove them from downtown area and  
18 reserve that space for business interests, and also  
19 wealthy white occupancy.

20 Q Where did black families get removed to?

21 A So, yeah, by the World War II era, that would be  
22 the east end, so Housing Project Development. That  
23 started originally in the 1930s, at lease the idea of  
24 it started 1930s. And it got off the ground by the  
25 1940s. But the Federal Government coming in, and also

1 providing funds and the Richmond Housing Authority,  
2 would be the ones who were organizing it on behalf of  
3 the City. And yeah, they began to house working class  
4 black families, working with under class black families  
5 as a response, as a direct result of urban renewal,  
6 right. so part of removing people from the core of the  
7 City, poor people from the core of the City. Something  
8 would have to replace them. Of course it would be  
9 business, of course it would be wealthy white  
10 occupancy. Another thing would be interstates and  
11 highways, these are pathways that could connect middle  
12 class people who lived further out in the county or  
13 moving further out in the counties. Deprived them of  
14 access to downtown areas.

15 Q So black are being moved to the east end of the  
16 City.

17 A Yes.

18 Q Whites moved to the west end and suburbs?

19 A Well, so, they are not being moved per se they are  
20 being encouraged to go elsewhere, primarily the  
21 suburbs, through plans like block busting.

22 Q Let's talk about what that, how they were being  
23 encouraged. Were there advertisements that were  
24 helpful in that process?

25 A Yes. So newspapers in Richmond, only a few

Chiles - direct

26

1      newspapers. There was one major black newspaper, and  
2      two major white newspaper. They would print different  
3      housing advertisements based upon the neighborhoods.  
4      So white neighborhoods, white -- vacant available homes  
5      in white neighborhoods would be printed in those  
6      newspapers. And the other would be posted in black  
7      newspapers.

8      Q      At the time Richmond had a black newspaper and had  
9      some white newspapers, right?

10     A      Yes.

11     Q      So advertisements for white houses in white  
12     neighborhoods were posted only in the white newspaper?

13     A      Yes.

14     Q      And the reverse was for black homes in black  
15     neighborhoods posted in the black newspaper?

16     A      Yes.

17           I'm sorry. Go ahead.

18     Q      That is okay.

19           Was there a payment, like real estate agents  
20     compensated to do things like that?

21     A      Yes. So black real estate agents actually worked  
22     with white agents to do things like this, for instance.  
23     If an area opened up, or let's say a group of real  
24     estate guys, we are talking lenders, we are talking  
25     people on the ground, they want to fill up parts of

1      Chesterfield and Henrico which were filling up with  
2      suburban housing and suburban residency. They would  
3      try to encourage whites to relocate out of the City.  
4      So they, white real estate agents would pay black ones  
5      to send black families in white neighborhoods they  
6      wanted to transition. That is what block busting is.  
7      So when they sent them there white people would be  
8      alarmed. Oh my God, blacks are moving in. And when  
9      that happened for sale signs would go up, and whites  
10     would leave. And many of them would relocate to  
11     Chesterfield and an Henrico, Chesterfield and Henrico  
12     primarily. Some would move into south side of, the  
13     south side of Richmond. But most would go directly to  
14     the suburban counties. And filling those vacant homes  
15     in those formally white neighborhoods would be  
16     middle -- first, middle class black families and  
17     eventually working class black families.

18            THE COURT: Let's see if I have got this straight.

19            The real estate agents would cooperate with each  
20     other to sell houses in predominantly white  
21     neighborhoods to black people hoping that the white  
22     people would move out?

23            THE WITNESS: Yes.

24            THE COURT: And that was a way of developing the  
25     suburbs. And then I guess they also made money by

Chiles - direct

28

1 selling the houses in white neighborhoods to black  
2 people?

3 THE WITNESS: Yes. It was seen as everyone wins.

4 Right.

5 THE COURT: Yes.

6 BY MS KOENIG:

7 Q Did the Federal Government also participate  
8 through process of red lining?

9 A Yes.

10 Q Tell us briefly what red lining is.

11 A Briefly the Federal Housing Authority, which was  
12 part of, which is a part of the Federal Government, it  
13 was a department created by the Federal Government to  
14 bring the housing industry back in, and one of the ways  
15 was to provide insurance for mortgage loans.

16 THE COURT: To recover from the depression?

17 THE WITNESS: Yes.

18 THE COURT: And then the arrival of people back  
19 from World War II.

20 THE WITNESS: Yes. Yes.

21 So one of the ways that the FHA would insure homes  
22 was that they needed, they needed to know which  
23 neighborhoods or what area of a residential area were  
24 safer to insure and those that were not. So they  
25 worked with local housing authorities to determine

1       which neighborhoods were safe to invest in, which were  
2       ones were not. And there is a box written on this,  
3       actually, and other historians that have talked about  
4       it. But in urban areas throughout the south, Richmond  
5       being one of them, every single black neighborhood was  
6       listed as do not invest in, so don't. So mortgage  
7       activity in those neighborhoods were next to nil.

8           Whereas white neighborhoods and mixed, what would  
9       be considered then would be mixed neighborhoods, so  
10       like 20 percent black people lived there and it was  
11       mostly white folks would get the majority of the  
12       mortgage activity.

13           THE COURT: They would get mortgage insurance --

14           THE WITNESS: Yes.

15           THE COURT: -- which allowed the lenders --

16           THE WITNESS: Yes.

17           THE COURT: -- to make the loans for that area.

18           THE WITNESS: Yes.

19           THE COURT: Otherwise they wouldn't take the risk  
20       in an area without mortgage insurance.

21           THE WITNESS: Yes.

22           THE COURT: You said something earlier that I  
23       chronologically didn't grasp. You said that part of  
24       the removal of African-Americans from white, from the  
25       then predominantly African-American neighborhoods,

1 housing projects, was done by the location of highways.  
2 I had understood that the bulk of that, at least in  
3 Richmond, occurred when they ran interstate 95 through  
4 the heart of the African-American community.

5 THE WITNESS: That was one of them.

6 THE COURT: Which was later then seemed like you  
7 had chronologically placed that in earlier testimony.

8 THE WITNESS: Yeah, so when people talk about,  
9 what is it, interstate 95 and things like that in  
10 Richmond, that is kind of the poster child for black  
11 removal.

12 THE COURT: What were the earlier roads?

13 THE WITNESS: Earlier roads? I could not tell you  
14 the earlier roads. I do know that the Richmond, that  
15 the Richmond Housing Authority worked with the Federal  
16 Government in 1930s to try to get blacks out of the  
17 core of the City. So it wasn't necessarily the roads  
18 were the number one thing. It was the needs to be  
19 more, needs to be more segregation in the City to  
20 protect; one, the core of the City; and also to  
21 maintain the racial integ -- it was called the racial  
22 integrity of the City tie. And so --

23 THE COURT: What were the buildings that went up?  
24 Tell me what went up in Richmond that occurred after  
25 blacks folks were sort of herded into housing projects.

1     Are you talking about Thalhimers, Miller and Rhoads, or  
2     what are you talking -- what was it? I haven't -- I am  
3     pretty familiar with Richmond.

4                 THE WITNESS: Right.

5                 THE COURT: And I am having trouble figuring out  
6     for myself what it was that they built when they  
7     displaced all the African-Americans.

8                 THE WITNESS: Yeah. For some places it was roads,  
9     others -- well, so, let's say downtown expressway, that  
10    was one. I 95 --

11                THE COURT: That didn't happen until the '70s.

12                THE WITNESS: Sorry. Late '60s, early '70s.

13                THE COURT: It just opened up when I moved here.

14                THE WITNESS: Right.

15                And also, I mean, gosh, I could not tell you the  
16     name of the buildings that were put up in place of  
17     blacks being moved out of the core of the City, but the  
18     fact is they were. The goal was to open up the  
19     downtown area to -- for better organization, better  
20     business, organization of business, business buildings  
21     being built.

22                THE COURT: All right.

23                So, again you are kind of losing me here. Well,  
24     like, take for instance where the -- I mean, Jackson  
25     Ward continues to be a neighborhood.

1           THE WITNESS: Yes.

2           Smaller than it was, but yes.

3           THE COURT: So where did -- what part of it went  
4 away? Is it like where the coliseum is and all that?

5           THE WITNESS: Yes. That didn't come into play  
6 until '68 I believe when that was built. It was  
7 starting early '60s. But, yes, a lot of that was taken  
8 away because of the highways in the 1950s. And slum  
9 clearance. But, yes, again, the agenda was to remove  
10 poor blacks from the core of the City.

11          THE COURT: All right. Go ahead.

12          BY MS KOENIG:

13          Q      That's okay.

14          And are we also talking about the Shockoe Slip  
15 area that is now fully a business district?

16          A      Yes.

17          Q      And that entire district was vacated over the  
18 decades?

19          A      Yes.

20          THE COURT: I mean I used to work down there. All  
21 that stuff goes back to the civil war.

22          THE WITNESS: Right.

23          THE COURT: So where did people live down there?

24          THE WITNESS: Where? They lived right along the  
25 river down there. That is where they lived. So like

1       in shanties, not like organized neighborhoods.

2           THE COURT: Those houses are no longer there.

3           THE WITNESS: Absolutely not.

4           THE COURT: As near as I cana tell there is not --  
5       no houses were built to replace them.

6           THE WITNESS: Not at all.

7           THE COURT: Okay.

8       BY MS KOENIG:

9       Q     So, after World War II what -- was there a master  
10      plan that was created? Mentioned that earlier and I  
11      want to talk more about that with you now.

12      A     Yes. So the master plan again was to, the master  
13      plan, it was a plan created by, I forgot the City  
14      Planner's name, but went and shopped it around to  
15      various cities.

16      Q     In your report you referred to him as Harlan  
17      Bartholomew.

18      A     That is the guy's name. And so shopped it around.  
19      Richmond was one of the ones that adopted it. So the  
20      plan was to increase urban real estate value, and to  
21      again maintain the, quote unquote, integrity of the  
22      City through it's City core.

23           And the best way was to maintain racial  
24      segregation and residency. And so the plan was how do  
25      you begin to get people from the core of the City out

1 to the outskirts of the City, because by the time  
2 that that master plan was adopted Jackson Ward was no  
3 longer on the outside of the City, it was center of  
4 City now. So there needs to be a way to get people  
5 from the downtown area, or near the downtown area and  
6 get them closer to the periphery of the City. So that  
7 is where essentially you get the emphasis on, okay,  
8 let's get poor black people out to the east end,  
9 because that was a largely un -- I mean super under  
10 developed area at that time.

11 Q Was the goal to merge Richmond with Henrico and  
12 Chesterfield County?

13 A Yes. Sort of create a larger metropolitan area.  
14 So cities throughout the post World War II had combined  
15 City and suburb into one locality; Chicago, Cook  
16 County, Davidson, you name it. And so the best -- the  
17 goal was to have your, what Lassiter calls island  
18 suburbs pay for the urban core. So you have suburban  
19 rings on the outskirts, outskirts, like further out and  
20 as you get closer to the City you have organized  
21 patterns of segregated neighborhoods and black  
22 neighborhoods and white neighborhoods. But the further  
23 out you go around suburbs, that is where the wealthy  
24 people would live, and then some in City core as well.  
25 And they would basically pay for the metropolitan

1 growth, the need for new roads, schools, you name it.  
2 But the only way that could happen is if you had more  
3 racial segregation, because that maintained  
4 neighborhood integrity. Because the neighborhoods that  
5 were all white had higher property values than those  
6 that did not because those were the ones that FHA and  
7 other entities would invest, would invest not just  
8 mortgages but mortgage insurance and they were  
9 considered to be better risk for lending.

10 THE COURT: Isn't it also a fact that when you are  
11 doing planning one of the things you try to plan for  
12 are areas that don't require public services. So, for  
13 instance, that is why you have industrial parks.

14 THE WITNESS: Yes.

15 THE COURT: Industrial parks are places that  
16 provide jobs, and places where people live, that have  
17 highly valued property, pay a lot of property tax, but  
18 does not demand services other than really water and  
19 sewer, sewage for the plants.

20 THE WITNESS: Yes.

21 THE COURT: And that is far more productive in  
22 paying for the way the City works than having  
23 residential neighborhoods. Residential neighborhoods,  
24 whether black, white, or anything else, demand immense  
25 numbers of services. Schools, for instance.

1           THE WITNESS: Yes.

2           THE COURT: So I don't see -- I don't get what you  
3        are saying about how maintaining white neighborhoods  
4        allowed the expansion of the City. I think, as I read  
5        it one of the main errors of the 1970 zero annexation  
6        of the City is the City took predominantly residential  
7        areas and had to provide services to them without a  
8        concomitant expansion of the non-service demanding tax  
9        base.

10          THE WITNESS: That is correct.

11          THE COURT: So they did it to get white voters.

12        But it backfired on them.

13          THE WITNESS: Yes. That is two different things.  
14        When I say master plan, when I talk about master  
15        plan from the '40s, '40s going into the '50s, all that  
16        stuff was baked into the project. It wasn't  
17        exclusively, hey, let's all focus on race. Race was  
18        part of the grand plan to create --

19          THE COURT: Richmond tried to remain segregated as  
20        long as it could.

21          THE WITNESS: Yes.

22          THE COURT: When I came here in '76 it was a  
23        highly, highly segregated City. And pretty much  
24        remained so. But, obviously it was supported by the  
25        Government for many years.

1           Go ahead.

2   BY MS KOENIG:

3   Q   So what the matter plan was an idea to merge  
4   Richmond and Henrico and Chesterfield?

5   A   Yes.

6   Q   In part to maintain a white majority by making the  
7   City white population larger?

8   A   Yes. A hundred percent.

9   Q   When talking about moving from one location to  
10   another, was it the idea was that a lot of folks, white  
11   folks, that lived in the suburbs would come work in the  
12   City and then travel back to where they lived at the  
13   end of the day?

14   A   Yes, yes.

15           THE COURT: When you say merged into one city --

16           THE WITNESS: Yes.

17           THE COURT: -- do you mean actually do away with  
18   the --

19           THE WITNESS: Jurisdictional boundaries, yes.

20           THE COURT: So it would be like what they did with  
21   the Charlotte.

22           THE WITNESS: Mecklenberg. Absolutely.

23           THE COURT: But, so the idea was that eventually  
24   most or all of Henrico, and most or all of northern  
25   Chesterfield would become part of the City of Richmond.

1           THE WITNESS: Yes, absolutely. Richmond tried,  
2   their first attempt to do that was with Henrico County  
3   in 1960s, I want to say 1961, 1962. I could be wrong  
4   on the years. But they attempted a merger; however,  
5   Henrico County voters by and large voted against it.  
6   And ever since, ever since then and also they reached  
7   out to Chesterfield County leadership. They were not  
8   responsive. Ever since then it was, okay, we are going  
9   to see you in annexation court and just bite off chunks  
10   of your counties as much as we can until we get what we  
11   want, and that is a major metropolitan area. So the  
12   goal was to get rid of jurisdiction lines and make what  
13   is now Richmond, Henrico and Chesterfield into one  
14   larger city. That was the plan.

15   Q     And so --

16        THE COURT: That was not, that was not a purely  
17   Richmond factor.

18        THE WITNESS: No. No. Sorry.

19        THE COURT: You no longer have Princess Anne  
20   County.

21        THE WITNESS: That happened a little bit later.  
22   Those two localities, Princess Anne County and, God,  
23   Virginia Beach City, they merged willingly. Like that  
24   was kind of a marriage.

25        THE COURT: I thought most of those Chesapeake and

1       South Norfolk and Suffolk and Nansemond County, and I  
2       guess to a certain extent Newport News and Denbigh  
3       County?

4           THE WITNESS:  Newport News.  Oh, it was Warwick  
5       County.

6           THE COURT:  Warwick County.

7           THE WITNESS:  Yes.

8           THE COURT:  They merged voluntarily so their kids  
9       wouldn't have to go to City schools.  And they would  
10      have, maintain a white majority voting.

11          THE WITNESS:  Yes, by and large, yes.  So, yes.

12          In the Tidewater you have got a lot more willing  
13      mergers.  In the Richmond area you didn't.  The same  
14      thing in northern Virginia, places like Fairfax County,  
15      to be exact, they were just not on board with merging  
16      with Alexandria and other cities that wanted to take  
17      parts of them, or take all them if not parts.

18          THE COURT:  But in Tidewater they shut out Norfolk  
19      and Portsmouth.

20          THE WITNESS:  Yes, a hundred percent.

21          THE COURT:  To a certain extent Hampton.

22          THE WITNESS:  Have you read my book?

23          THE COURT:  No, it will shock you, but you talk  
24      about history I know about.

25          THE WITNESS:  Fair enough.  Fair enough.

1           But, no, you are a hundred percent correct. Like,  
2       that is spot on.

3       BY MS KOENIG:

4       Q      And so when we are talking --

5           THE COURT: Could we just take judicial notice of  
6       this stuff and move on?

7           MS KOENIG: We are about to move on, Your Honor.

8       BY MS KOENIG:

9       Q      So when we look at -- let's go back to defendant's  
10      exhibit 19, which is still on the screen here. We see  
11      this dark color that is south, primarily south of the  
12      river, James River?

13      A      Yes.

14      Q      And that seems to be indicated on the map,  
15      that that is the area that was annexed by the City of  
16      Richmond in 1970s?

17      A      Yes.

18      Q      Tell us about that annexation. What was the  
19      racial make up of this area in that dark sort of  
20      burgundy color?

21      A      Historians say between 95 and 97 percent white was  
22      what the demographics of that area were at the time.  
23      And around, between 43 and 45,000 people lived  
24      residentially, so, yes, majority white, and majority  
25      suburban.

1 Q Once that happened in the '70s in Richmond are  
2 there things that are happening in the City about  
3 school segregation?

4 A Yes. The City of Richmond tried to backdoor their  
5 way into a metropolitan area by combining the schools.  
6 Because that was the only way they were going to  
7 fulfill the mandate in Brown One and Brown Two. So it  
8 kind of served their interests both ways. So for one  
9 they get to finally live up to school deseg -- school  
10 integration as opposed to desegregation. And also they  
11 could combine public service, a public service between  
12 Richmond, Chesterfield and Henrico. And that could at  
13 least set the precedent for eventually getting that  
14 metropolitan area they wanted. But it blew up in their  
15 faces.

16 Q What do you mean it blew up in their face?

17 A Chesterfield and Henrico challenged in court, in a  
18 few years, and the Fourth Circuit Court of Appeals and  
19 eventually the Supreme Court -- well, the Supreme Court  
20 was a deadlock -- but the Fourth Circuit Court of  
21 Appeals ruled against Richmond trying to use the  
22 courts, the federal courts to do their bidding. And  
23 the idea that came to, that resonated to the top was  
24 the Dillon Rule, right. So that localities cannot use  
25 the courts to try to bully other jurisdictions into

1       doing what they want them to do. Jurisdiction has only  
2       as many rights as the state government, that the state  
3       government gives them, because they are subsidiaries of  
4       the state government.

5       Q       And when you say the Dillon rule, it is  
6       D-I-L-L-O-N rule, right?

7       A       Yes.

8       Q       That is the law that the legislature passed?

9       A       Well, no, it wasn't a law that they passed, it was  
10      a, it was a, it was a court decision that was at least  
11      1868, so old, so long ago, but it was an idea that  
12      was -- that was the main idea that the federal, Fourth  
13      Circuit of Appeals used.

14           THE COURT: The Dillon rule says --

15           MS KOENIG: I'm sorry. I misspoke, Your Honor.

16           THE COURT: -- local governments have only those  
17      powers expressly given to them by the legislature --

18           THE WITNESS: Yes.

19           THE COURT: -- or necessarily implied.

20          BY MS KOENIG:

21       Q       And that is what Judge Merhige relied on and  
22      Fourth Circuit relied on to tamp down this plan, right,  
23      that Richmond wanted to --

24       A       Well, Judge Merhige in Richmond's favor. The  
25      Fourth Circuit Court of Appeals ruled against them and

Chiles - direct

43

1 it was the Dillon rule that they brought up as, hey,  
2 Richmond, you only have as much power as the state  
3 gives you. You can't just use the federal courts to  
4 bully your way into Chesterfield and Henrico using  
5 schools. When Richmond appealed to the Supreme Court  
6 they lost. Not lost, but it was a deadlock, one voter  
7 abstaining, and that was Justice Powell, who was a  
8 Richmond native and served on the school board, served  
9 as a superintendent of schools here.

10 THE COURT: Not the superintendent of schools. He  
11 was chairman of the school board.

12 THE WITNESS: Okay, that's fine, chairman of the  
13 school board, yes. So he abstained and it was a  
14 deadlock and at that point the case was closed.

15 BY MS KOENIG:

16 Q And you wrote about all of this in your 2016  
17 masters thesis, right?

18 A Yes.

19 THE COURT: What is this book you are talking  
20 about? I don't see a published on your curriculum  
21 vitae.

22 THE WITNESS: So I have a book that is under  
23 contract with the University of Virginia --

24 THE COURT: Courage to Change?

25 THE WITNESS: Yes.

Chiles - direct

44

1 THE COURT: Okay. All right.

2 BY MS KOENIG:

3 Q So if you can flip to defendant's exhibit 11.

4 Do you recognize defendant's exhibit 11 as your  
5 masters thesis?

6 A Yes. So long ago.

7 MS KOENIG: I move to admit this as defense  
8 exhibit 11.

9 MR. GIBBONS: No objection, Your Honor. Same  
10 relevance objection.

11 THE COURT: It is kind of hearsay. But I assume  
12 he is going to explain this is all true --

13 MS KOENIG: Right.

14 THE COURT: -- and sort of give us the executive  
15 summary.

16 BY MS KOENIG:

17 Q Before you wrote your masters thesis, Dr. Chiles,  
18 you did a fair amount of research, right?

19 A Yes.

20 Q Interviewing folks, looking at original sources,  
21 things like that?

22 A Yes.

23 Q Did a lot of investigation before you wrote this  
24 thesis?

25 A Yes. Absolutely.

Chiles - direct

45

1 Q What you put in this thesis is the result of your  
2 research and findings of your research?

3 A Yes.

4 Q Let's talk about 1977 and the City of Richmond.

5 THE COURT: Are we going to relate this to law  
6 enforcement at some point?

7 MS KOENIG: We are. We are getting very close.

8 THE COURT: Let's get even closer.

9 BY MS KOENIG:

10 Q In 1977, Your Honor -- I'm sorry, Dr. Chiles --  
11 was there a change about the leadership of the City of  
12 Richmond?

13 A Yes.

14 So the leadership as in the City Council was  
15 majority black for the first time ever in history.

16 Five black, four white members, nine in sum.

17 Q What happened as a result of the there being a  
18 black majority for the first time ever on the City  
19 council in Richmond?

20 A Yes. So black majority came in, came into power  
21 into a city that was financially hamstrung. Suburban  
22 flight had just completely decimated its tax base. Had  
23 been doing it for decades up until that point. But the  
24 chickens were slowly coming home to roost on that. And  
25 they needed to find a way to, needed to find a way to

Chiles - direct

46

1 attract suburbanites back to the City. Not just as  
2 consumers and workers -- they were already doing  
3 that -- but workers more so than consumers. But they  
4 needed to bring them back as residents. They tried  
5 various urban revitalization plans, the building of a  
6 downtown mall, business parks to attract to come back  
7 from the suburbs, and to come from out of town. One of  
8 the issues they ran into was crime. As something  
9 people cited, business leaders more specifically, cited  
10 that was like one of the number one issues why they  
11 would not invest in Richmond's quote unquote, rebuild  
12 when black leadership came into power, so, yes, that  
13 was the issue.

14 Q So you talked about the revitalization project.  
15 And I think you mentioned Project One?

16 A Yes.

17 THE COURT: Didn't mention it yet. Referred to  
18 it, but he didn't mention it.

19 BY MS KOENIG:

20 Q Tell us what Project One was.

21 A It was a City-sponsored endeavor in which they and  
22 also a non-profit business coalition which was  
23 Richmond, Jesus Christ, Downtown Development Unlimited,  
24 DDU. They came together with the City Council to build  
25 business infrastructure downtown, so office buildings,

Chiles - direct

47

1 parking decks, things like that. And the goal was to  
2 attract industry back. One --

3 THE COURT: Richmond Metropolitan Authority is  
4 what you are talking about.

5 THE WITNESS: Sorry.

6 THE COURT: Talking about the Richmond  
7 Metropolitan Authority.

8 THE WITNESS: No.

9 THE COURT: Build parking decks and all that?

10 THE WITNESS: No. I'm talking about Downtown  
11 Development Unlimited. So it was chaired by Andrew  
12 Brent, attorney here. And it was a bunch of  
13 businessmen who ran it, non-profit group, and their  
14 goal was to attract industry back, and the best way to  
15 do it was to get the City to invest in building new  
16 business infrastructure.

17 BY MS KOENIG:

18 Q So the feedback that they were getting is, we  
19 don't want to invest in the City, it is too crime  
20 ridden.

21 A So from them, not specifically. It was from the  
22 people who, Richmond Renaissance, who built the  
23 Downtown Mall. That came along in the mid 1980s. So  
24 by the mid 1980s they, as in Richmond Renaissance and  
25 the City, they are doing surveys of various

Chiles - direct

48

1 neighborhoods. And just to kind of get to understand  
2 what they looked like, what is the demographics, and  
3 also talking to business leaders. And in some of these  
4 surveys they are saying, I mean flat out, hey, crime is  
5 biggest issue here. If you want to get more  
6 investment, you have to tamp down on the crime problem.

7 Q So what did the City do to do that?

8 A They began creating task force, various task  
9 forces that were designed to target high crime areas,  
10 or what they think were high crime areas. So, yes, the  
11 City police, they would try to hire more officers and  
12 to create various departments for them, various groups  
13 that would go into high crime areas, mostly the housing  
14 projects in the east end. And they would set up shop  
15 there, sit there try to catch people doing hand-to-hand  
16 deals. Also try to do drug raids. There was what they  
17 were targeting mainly drugs and guns is what they were  
18 after.

19 Q Did that project have a name?

20 A God. Yes, it did. What is the name? I'm sorry.  
21 I'm blanking on it right now.

22 Q Was it called the SNAP Program?

23 A SNAP, Strategic Neighborhood Something Something  
24 Something. Yes, but that was one of many. They had  
25 various other programs, other programs, but that was

1       the one that City Manager Robert Bobb, that was the one  
2       he promoted the most.

3       Q      Did that effectively start militarizing the  
4       Richmond Police Department on certain neighborhoods in  
5       Richmond?

6       A      It didn't start it. It didn't start militarizing.  
7       It more so cemented it. Militarization started in the  
8       1960s with the threat, or let of fear riots coming to  
9       Richmond in the aftermath of Martin Luther King dieing.  
10      That is when the police really started to get tactical  
11      training, started to get anti-riot gear. They were  
12      being prepared by City, being funded by City  
13      leadership, prepared by police leadership to focus on  
14      anti-riot things. So that is when the militarization  
15      really started with police. But by the time we get to  
16      the 1980s they are taking, they are focusing  
17      exclusively on black neighborhoods.

18           Again, I mean, I guess you could you stay  
19      militarizing, you know, doing raids.

20           THE COURT: I am not sure what you mean by  
21      militarizing.

22           THE WITNESS: So body armor was, they are getting  
23      more, what you call it, not military grade gear, but  
24      their gear is not just a uniform, a gun, and badge. It  
25      is a hard helmet, it is what do you call it --

Chiles - direct

50

1           THE COURT: Body armor?

2           THE WITNESS: Yeah, body armor and things of that  
3 nature.

4           Yes, so they are getting that stuff started in  
5 1960s.

6           Now, how often they were using it, I don't know.

7           But they started getting it in the 1960s, that I do  
8 know. And by the 1980s the police are targeting, are  
9 targeting crime what is the high crime areas.

10          As a result of the City manager setting out his  
11 agenda said, hey, we need to tamp down on crime because  
12 it is hurting investment in Richmond.

13          THE COURT: So, and high crime areas happen to be  
14 predominantly African-American --

15          THE WITNESS: Yes.

16          THE COURT: -- is that correct?

17          THE WITNESS: Yes. Yes.

18          MS KOENIG: So --

19          THE COURT: Tell me what, how they identified  
20 African-American areas as high crime areas.

21          THE WITNESS: How they identify them?

22          THE COURT: Yes.

23          THE WITNESS: 1980s they did neighborhood surveys.  
24 They went through, they went through, again, checking  
25 to see where people lived, where did they work, how --

1 where did they work, how much they made, things like  
2 that. Also, I mean, I would assume they would have  
3 some internal data. Again, I cannot confirm this, but  
4 I would assume that the police back then had some  
5 internal data to which areas were high crime and which  
6 areas weren't.

7 I would assume that they had that information.

8 THE COURT: You don't know that?

9 THE WITNESS: I don't know. I don't know from  
10 that time period where they got, say, or said, okay, we  
11 know these five neighborhoods have the, are engaged the  
12 most in drug dealing. Like, I don't know how they  
13 would come to that conclusion. I would assume they  
14 would get that information from officers on the ground.

15 They would have some sort of internal --

16 BY MS KOENIG:

17 Q We won't ask you to assume, Dr. Chiles --

18 A I'm sorry.

19 Q That's okay.

20 THE COURT: Here is the thing.

21 It's an interesting question that you raise that  
22 they were targeting high crime areas. And one of the  
23 ways they identify high crime areas was through asking  
24 public's opinion.

25 THE WITNESS: Yes.

1           THE COURT: I will tell you, I live in the area  
2       that was an annexed in the 1970s.

3           I am a white person. I lived in what was not  
4       exclusively, but predominantly, a white area. And many  
5       of my neighbors were pretty well angered about being  
6       annexed from Chesterfield County into the City. And  
7       they felt that there was, they were now opened up to  
8       all kinds of crime. And I will tell you that their  
9       feelings were based on absolutely zero empirical data.  
10      Just what they believed. They said, well, I live in an  
11     area with a lot of African-American people, I don't  
12     know if they used must less polite terms, and there is  
13     going to be crime everywhere. But I don't know whether  
14     that was an accurate presumption or not. And neither  
15     do you, apparently, because you assumed that they had  
16     data that shows that there was more crime in black  
17     areas than white.

18          THE WITNESS: I like to think that I am rational  
19       in some way.

20          THE COURT: Well, you are rational, but, I mean,  
21       why do you think that?

22       BY MS KOENIG:

23   Q     So, Dr. Chiles --

24          THE COURT: Tell me, why do you think that? Why  
25       do you think -- do you believe there was more crime in

1 black areas of town than white areas of town?

2 THE WITNESS: When? In 1980s?

3 THE COURT: Yes.

4 THE WITNESS: Probably.

5 THE COURT: Why is that?

6 THE WITNESS: Poverty. So history has  
7 consequences. That is something that we don't like to  
8 admit nowadays. So when people have been segregated,  
9 confined, given, or provided, or given, yes, given an  
10 inferior education that doesn't allow them to compete  
11 in a traditional economy like everyone else, the result  
12 is that crime is typically higher in those areas.

13 Again, you don't have to have a PhD from Harvard to  
14 know that.

15 THE COURT: Or even from Georgia.

16 THE WITNESS: Or from Georgia. A little step  
17 down, right, but yes.

18 THE COURT: Not at all.

19 THE WITNESS: So when you have, so, yes, when you  
20 have that happening for generations, literally  
21 generations that happens, what is it, crime is going to  
22 be the natural result, especially disproportionate to  
23 the rest of the City. So, of course, these things are  
24 going to happen, more crime, more, higher crime area  
25 than say the far west end because people in the east

Chiles - direct

54

1 end have systemic poverty going against them for so  
2 long. So that is what I would say to answer that  
3 question.

4 BY MS KOENIG:

5 Q Do you see, did you see, Dr. Chiles, the long-term  
6 impact of removing blacks from certain parts of town  
7 and denying them the access to gain mortgages? Did we  
8 see that impact play out in the data that you found in  
9 the 1970s and 1980s?

10 A Yes. Yes. Absolutely. There is definitely a  
11 connection between the two.

12 Q What did you -- what does the data say about  
13 mortgage activity in black areas and white areas in  
14 Richmond in the 1980s?

15 A Black areas had next to none. They had close to  
16 zero mortgage activity whereas white areas had all of  
17 it, nearly all of it. We are talking in the 80 percent  
18 range of mortgage activity in the Richmond area.

19 So, it wasn't until the mid, the early to mid '80s  
20 that local groups in Richmond stopped, real estate  
21 community -- so we are talking about mortgage lenders,  
22 real estate firms, those who were represented on the  
23 board of realtors for much of the 20th century -- to  
24 stop engaging in that behavior. And they used the  
25 Community Reinvestment Act as a way to do it. So

1 basically threatening to get the Federal Government to  
2 pull bank charters and bank mergers, because those  
3 firms had been engaging red lining and block busting  
4 illegally throughout 29th Century.

5 Q And last year did you publish an article that  
6 detailed all of your research and findings on those  
7 more recent topics we have been talking about?

8 A Some of them, yes.

9 Q If you can look at defendant's exhibit 12.

10 Do you recognize that article that you have  
11 entitled Here We Go Again as the article from 2021?

12 A Yes.

13 Q Is that article the publication of, as you said,  
14 some of your findings, not maybe the complete  
15 recitation, but some of your findings that we have just  
16 discussed on the topics that we are happening in  
17 Richmond from 1977 until closer to now?

18 A Yes.

19 MS KOENIG: I move to admit defendant's exhibit  
20 12.

21 MR. GIBBONS: No specific objection, but same  
22 relevance objection, Your Honor.

23 THE COURT: All right. Admitted.

24 BY MS KOENIG:

25 Q I want to bring your attention back to exhibit R

1       2. That is on the screen.

2           You can look at it. A little fuzzy in terms of  
3       color on The Court's monitor. But, where we see these  
4       areas of green, and where we see the areas of blue, in  
5       your knowledge, with your knowledge of the history of  
6       residential segregation in Richmond based on race, is  
7       it by happenstance that green dots are where they are  
8       and blue dots are where they are?

9       A     No.

10      Q     What is it the cause of?

11      A     Again, the tide of history. So, again, black  
12     people were, one pushed to the outside of the City,  
13     talking pre-slavery, or pre-end-of-slavery,  
14     post-slavery, blacks had been pushed again by local  
15     Government and private, and the private real estate  
16     industry as well, out to the east end. The blacks who  
17     could avoid such fate, especially between 1950s and  
18     1970s, began moving to the north side. Those who were  
19     more middle class, basically less affluent were moving  
20     to the south side. Just as an affordable housing  
21     option because of urban renewal plans. From much of  
22     that we see that that is still the case today. Again,  
23     but, no, there is no, this is not by happenstance that  
24     blacks and whites live segregated in Richmond. And  
25     where they live, I mean because if you look at the

1 historical patterns, that is where black people were  
2 forced to live in the past. So surprise, surprise,  
3 black people are still living in there in abundance  
4 today.

5 Other things that we haven't discussed, and I did  
6 not put in the report about education or the lack  
7 thereof, access to the tech-based or soft-skills based  
8 economy, all those things play a factor. But by and  
9 large blacks and whites were basically forced or coaxed  
10 to live in separate sides of the City from the past to  
11 the present. And the result of that is in the present.

12 Q I want to talk with you now about the Richmond  
13 Police Department and its history of conflict with the  
14 back population of Richmond specifically.

15 Briefly move to the historical aspect.

16 A Got you.

17 Q After the revolutionary war what happened with the  
18 Richmond Police Department?

19 A Richmond Police Department was effectively turned  
20 into a group by the citizenry here in Richmond on  
21 focusing on free blacks and focusing on slaves to  
22 prevent them from starting insurrections. So there was  
23 a huge fear in the early 1800s of slave insurrections.

24 A lot of that came from the history of revolution.

25 Other slave rebellions that happened throughout the

1       country. And so the police were effectively turned on  
2       to them. Whereas prior to the revolution police in  
3       Richmond, their focus was not on black people hardly at  
4       all. There were hardly any free black people right  
5       before the revolution. And also, slaves were seen as  
6       the problem of their master, they were not the problem  
7       of people around them necessarily. So police would  
8       focus more on horse thieves, and pig thieves and, you  
9       know, Indian nations that would come through.

10           But, yes. So after the revolutionary war police  
11       started targeting blacks in Richmond.

12   Q     What happened with policing in Richmond after the  
13       civil war ended?

14   A     After the civil war, I said it before, they began  
15       to target black people because; one, they were free;  
16       and there was a general anxiety about what that freedom  
17       meant. You know, were they going to completely flout  
18       tradition and just, again, not to speak to whites the  
19       way they were supposed to, were they going to up and  
20       move to white areas. Like, what's going to happen. So  
21       police in Richmond, again, they doubled down more so on  
22       their enforcement of black people because again, there  
23       is more free black people available than there were  
24       before.

25   Q     Did the Richmond Police Department ever -- was it

1 ever accused of voter suppression?

2 A Yes. Police Department in the late 1800s, so this  
3 is just around the time of Jim Crow, disenfranchisement  
4 law, segregation, being formalized. State  
5 legislatures, city councils, in places of that nature,  
6 voting was really important. So black Richmonders --  
7 again this is happening throughout the country,  
8 Richmond is no exception -- black Richmonders tried  
9 their best to vote people into office, local, at the  
10 local and state level who would not support Jim Crow  
11 legislation, would not support disenfranchisement,  
12 segregation. And in some cases -- John Mitchell  
13 documented this throughout his struggles in the late  
14 1800s about black people going to the polls and being  
15 chased away by angry white Democratic mobs. In some  
16 cases police were out there to help them to do the  
17 deed, to basically prevent them from putting their  
18 ballot in the ballot box. So, yes. Yes, I will just  
19 leave it there.

20 Q When the Richmond Police Department started  
21 arresting white people was there a significant outcry  
22 about that?

23 A Yes. So when they increased their arrest of white  
24 people -- they always arrested white people, but by the  
25 progressive era, so we are talking 20th century, the

Chiles - direct

60

1 police department in Richmond began to focus more on  
2 things like on drug abuse, prostitution, alcoholism.  
3 Again, this is something that is not unique to  
4 Richmond. When the police department did focus on,  
5 focus on incor - excuse me -- focus on those illicit  
6 activities, citizens in Richmond got mad. They got mad  
7 because they did not want police to target white  
8 people. They wanted them to focus, refocus on black  
9 people. They even threatened to like not fund the  
10 police department. They wanted public officials to  
11 stop funding the police in the early 20th century  
12 because their focus shifted slightly away from black  
13 people.

14 Q All right.

15 When the Richmond Police Department started  
16 focusing on arresting whites and away from arresting  
17 blacks, whites started vocally calling for defunding  
18 the police?

19 A Yes.

20 Q What happened as a result of that public outcry?

21 A The police -- well, one, changing of  
22 administration at the City Council level; and then two,  
23 the police began to refocus again back on the, yes,  
24 they began to refocus back on who they were supposed to  
25 be patrolling and surveilling.

Chiles - direct

61

1 Q Did this, did you read a dissertation by Lewis --  
2 I can't, I don't know how to pronounce his last name  
3 but it is spelled C-E-I -- about this?

4 A Yes.

5 Q His dissertation, there are only two dissertations  
6 that I have ever found that have, that have talked  
7 about Richmond Police and race relations. And that one  
8 is by far the most comprehensive. And that is where I  
9 am getting this information.

10 Q For the record, that is already in this record in  
11 this case as exhibit Z to ECF number 86.

12 THE COURT: All right.

13 MR. SIEBERT: Your Honor, I would object to that  
14 being admitted. He didn't draft it, he didn't write  
15 it, he didn't check any of the sources on that. How  
16 could that be admitted as evidence?

17 MS KOENIG: I wasn't seeking to admit it as  
18 evidence in the case. Just referring that that is the  
19 dissertation that has already been in record. It is  
20 the same one I have posted before.

21 THE COURT: Let me just ask you.

22 This dissertation by Mr. Cei or Cei, Cei or Cei,  
23 is that the kind of data on which historians typically  
24 rely to reach conclusions about what happened in  
25 history?

1           THE WITNESS: Yes. So, historians work with what  
2 they have, like in any other set of scholars. So,  
3 Mr. Cei or Cei, he had access to data that I don't have  
4 access to. I mean, he had police records from, you  
5 know, the civil war period, post-civil-war period. I  
6 am assuming, and I believe that I -- I am not  
7 assuming -- but I read in the dissertation that he got  
8 access to those while completing the dissertation in  
9 the '70s. Where that information is today I do not  
10 know. But historians have to work with what they have.  
11 So that is a vetted project. Again, he earned a PhD on  
12 it. So there have been some level of validation that  
13 the work was accurate for the most part. So yes, the  
14 short answer is yes. Historians rely on what we have.

15 Q       Is Mr. Cei's dissertation the kind of information  
16 and evidence that you would rely on as a historian?

17 A       Yes.

18           THE COURT: I don't think the question is whether  
19 he would rely on it. The question is whether it is the  
20 kind of thing that experts in his area typically rely  
21 on.

22 BY MS KOENIG:

23 Q       And as a historian and expert in the history of  
24 race and politics in Richmond is Mr. Cei's dissertation  
25 the kind of evidence that one in that position, an

Chiles - direct

63

1 expert in your position, would rely on?

2 A Yes. If I am doing anything related to Richmond,  
3 and both Richmond Police and race, and I am trying to  
4 get it published, or I am teaching it, right, like I  
5 have to rely on what I have. So, yes, I would rely on  
6 that dissertation.

7 MS KOENIG: I think then we have met the criteria  
8 under Federal Rule of Evidence, I think it is 702, for  
9 admission.

10 I neglected to bring my cheat sheet.

11 703, Your Honor. The basis of an expert's opinion  
12 testimony, if experts in a particular field would  
13 reasonably rely on these kinds of facts or data in  
14 forming an opinion on the subject, they need not be  
15 admissible for the opinion to be admissible. But the  
16 fact or data that would otherwise be admissible, the  
17 proponent of the opinion may disclose them, if that  
18 would aid the trier of fact in finding that  
19 information.

20 THE COURT: All right. Well, you still have not  
21 tried to put in Mr. or Dr. Cei's dissertation, but your  
22 witness can rely on it.

23 MS KOENIG: Thank you, Your Honor.

24 BY MS KOENIG:

25 Q Dr. Chiles, was there a long resistance within the

Chiles - direct

64

1      Richmond Police Department to hiring black police  
2      officers?

3      A      Yes.

4      Q      And did -- was there in the 1960's a proposal to  
5      the Richmond Police, to the City of Richmond, to create  
6      a police board?

7      A      Yes.

8      Q      Tell us about that.

9      A      So this is something that can be, that can be and  
10     has been validated using media sources at the time, so  
11     you don't just have to take Dr. Cei's dissertation at  
12     the word on this issue. So, for one, black residents  
13     had been complaining to local leaders, black leaders,  
14     and also to City Government to a lesser extent about  
15     things like police brutality and just mistreatment by  
16     police officers since the early 20th century. Nothing  
17     had come of it. By the 1960's black residents, they  
18     proposed the City Council adopt a police review board.  
19     This board would be, would hold citizens, it would hold  
20     police officers, and the goal was to try to vet police  
21     brutality, or just issues between residents, black  
22     residents and cops. It was to kind of see where there  
23     could be a middle ground. Was there a truth to it, was  
24     there no truth at all? The City Council at the time  
25     was very resistant to it. They were resistant to it

1 primarily because the police department was a hundred  
2 percent in resistance to it. Was every cop against it?  
3 Probably not. But at the united front publicly there  
4 was no traction for it at all. They were not, they did  
5 not want citizen oversight. They didn't want that  
6 citizen oversight because that citizen oversight would  
7 be majority black. Because those are the people who  
8 were doing it. And also the City was trending blacker  
9 throughout the '60's as well. So it wouldn't be just a  
10 bunch of people from the white west end on the police  
11 review board, it would be people from Church Hill on  
12 the police review board. And they wanted no part of  
13 that.

14 Q We talked about how when the City was becoming  
15 blacker.

16 A Yes.

17 Q Certain parts of the City becoming a hundred  
18 percent blacker?

19 A Yes, absolutely.

20 Q Did that in many ways relate to the housing  
21 project in various parts of the City?

22 A Yes, a hundred percent.

23 Q Were residence of those housing projects almost  
24 exclusively black?

25 A Almost exclusively, yes.

Chiles - direct

66

1 Q In the 1980s when we talk about the SNAP task  
2 force --

3 A Yes.

4 Q -- what effectively happened with the Richmond  
5 Police as it relates to the housing projects  
6 themselves.

7 A They targeted them. Because those were seen as  
8 places where the majority of crime happened. So again,  
9 you know, you would have cops who would post up on  
10 corners and trying to catch people doing hand-to-hand  
11 deals. Try to -- people doing, what is it, selling  
12 guns and drugs mainly is basically what that was.

13 Q So is that the time when you start to see that  
14 what is happening at the housing projects is the  
15 Richmond Police Department just surveilling them?

16 THE COURT: Doing what?

17 MS KOENIG: Just surveilling the housing projects,  
18 not responding to active calls, but sitting there  
19 waiting, watching.

20 THE WITNESS: Yes.

21 BY MS KOENIG:

22 Q Did these things change when the Richmond Police  
23 Department began hiring black officers?

24 A No, not at all.

25 Q You have written in your report a quote that came

Chiles - direct

67

1 I think from Mr. Cei's dissertation that said, that a  
2 black police captain discussing the Richmond Police  
3 Department culture in the late 1980s said, we have a  
4 black mayor, a black city manager --

5 MR. GIBBONS: Objection. Hearsay.

6 THE COURT: What is the question?

7 MS KOENIG: That this quote is coming from  
8 Mr. Cei's -- Dr. Chiles has just testified that after  
9 Richmond started --

10 THE COURT: What was the question?

11 MS KOENIG: The question is, is this in part what  
12 he was relying on, this information from Mr. Cei's  
13 report in giving that expert testimony.

14 THE COURT: All right.

15 BY MS KOENIG:

16 Q A black assistant city manager and many high  
17 ranking black public officials, yet it seems very  
18 little has changed?

19 A Yes. So, yes. Yes.

20 THE COURT: Let me just ask you this.

21 Here is what the other side is going to say, and  
22 there is some logic to this. A lot of logic maybe.

23 If there is a lot of crime in black areas, why  
24 shouldn't they send a lot of police there?

25 THE WITNESS: I can't answer that. I can only

Chiles - direct

68

1 answer, only say what the past is telling us.

2 THE COURT: The past is telling us -- what you  
3 told me so far is that there were -- is that for  
4 reasons that aren't very good the government and the  
5 business community forced African-Americans to move  
6 into predominantly -- into almost exclusively racially  
7 segregated areas.

8 THE WITNESS: Yes.

9 THE COURT: You told me that in your judgment  
10 those areas for reasons of history, poverty, lack of  
11 education and the like, were breeding grounds for  
12 crime.

13 THE WITNESS: Yes.

14 THE COURT: And then you have told me that in  
15 order to make people think Richmond was safer they  
16 assigned police officers to go there. Well, whatever  
17 their motive was, what is wrong with sending police  
18 officers to an area that has a lot of crime?

19 THE WITNESS: I can't -- I don't -- I don't have  
20 an opinion on that.

21 THE COURT: Okay.

22 Why don't you tell me what is wrong that.

23 MS KOENIG: Do you want me to answer that now,  
24 Your Honor?

25 THE COURT: Yes, answer that now. That is really

1       the question the case is about. I accept that based on  
2       what he says this stop that we have in this case, and  
3       the way the precincts are set up in the City places a  
4       lot of police officers in predominantly  
5       African-American areas. And your witness has said that  
6       for a lot of reasons those areas have higher crime  
7       rates than other, than white areas. So --

8           MS KOENIG: I think what we are finding, Judge,  
9       Your Honor, is that this -- so the pattern that we see  
10      in the green dots and the blue dots in defense exhibit  
11      R 2 is not by happenstance. It's not by happenstance  
12      and not separated from race that black people in the  
13      City of Richmond, many of them, in fact perhaps the  
14      majority of them, are forced into poverty and then kept  
15      into poverty because of their race. They are then  
16      moved from the areas in which they might have been able  
17      to claim a property ownership because roads and other  
18      buildings, they were deemed to be unsightly, right,  
19      need to be moved out of the area, slumps need to be  
20      cleared, lose any access to the ability to gain wealth  
21      that they have, they are not allowed to get mortgages,  
22      and so they are moved to housing projects where they  
23      are renters, and so what do you think is going to  
24      happen? Right? What do we think is going to happen  
25      when we do that? I am not in any way submitting that

1       there are statistics that show that crime is only  
2       happening in the areas of the housing projects. It is  
3       just that what happens from Dr. Chiles's testimony is  
4       we know that the Richmond Police Department just starts  
5       setting up in the housing projects.

6           THE COURT: Okay. Here is the thing.

7           But, that -- there is an abhorrent history in  
8       Richmond and in Virginia and maybe in our nation at  
9       large, of segregation which has both social and  
10      educational and economic complexes or effects. And it  
11      results in a substantial, a substantially higher crime  
12      rate in black areas than in white areas. That seems to  
13      be what your witness is testifying to.

14          So, you know, there are people in those areas that  
15      are not criminals. And they deserve to live in an area  
16      where there is not a lot of crime --

17          MS KOENIG: And I think --

18          THE COURT: -- and they send police officers in  
19      there.

20          MS KOENIG: Fair enough. I think so where this is  
21      moving, Your Honor, is that where crime area -- if you  
22      are here talking about like the possession of a gun and  
23      the police targeting someone who has got the gun and  
24      they happen to be black, I think that would be a very  
25      different scenario than what are facing now, because we

1 are looking at traffic stops --

2 THE COURT: Well, that is the other aspect of it.

3 It seems to me, you know --

4 MS KOENIG: -- because the Government's map  
5 showing homicide and manslaughter areas --

6 THE COURT: That may be true with people making  
7 left turns.

8 MS KOENIG: It doesn't. When you look at, when  
9 you compare those maps to the figures in defense  
10 exhibit 2, which is Dr. Costin's report, showing the  
11 clusters of black drivers that are stopped throughout  
12 the City of Richmond, and the heat map, there are  
13 several areas that would not in any way explain just  
14 because there are some violent crimes happening in one  
15 part of town, why huge amounts of people, black people,  
16 are being stopped in traffic stops on border areas  
17 where white neighborhoods abut black neighborhoods.

18 That doesn't explain that. There is no --

19 THE COURT: I don't think Mr. Moore's stop was in  
20 a border area, was it?

21 MS KOENIG: Well, no, but we are talking about  
22 patterns of enforcement, Your Honor, that is what we  
23 are talking about here.

24 THE COURT: What do you say about this? Police  
25 officers are trained to give people tickets when they

1 see violations of the law. If you for a legitimate  
2 reason send a lot of police officers into a high crime  
3 area, they are going to see a lot of traffic  
4 violations. And then they are going to stop people. I  
5 mean, is that -- you have got to prove two things;  
6 intent and effect.

7 MS KOENIG: Right.

8 THE COURT: And it is clear to me from the  
9 evidence in this case that there is two sets of traffic  
10 laws. One for black people, and one for white people.

11 MS KOENIG: Yes.

12 THE COURT: And people, you know, white people  
13 forget to renew their license plates all the time. But  
14 they don't get stopped for it.

15 MS KOENIG: Right.

16 THE COURT: But that is because, might that not be  
17 because they are driving in areas in which there is a  
18 lower rate of crime, and therefore there are fewer  
19 police officers?

20 MS KOENIG: I think that is where we get, that  
21 where the evidence of where the stops are happening is  
22 so important. Because we saw from defense exhibit 2  
23 that when we have -- first we have no evidence at all  
24 that white drivers are less likely to commit traffic  
25 infractions than black drivers. Both Dr. Costin said

Chiles - direct

73

1       that and Dr. Smith, the Government's expert, didn't  
2       disagree with that. He indicated that he had no  
3       evidence to that effect.

4           So if we operate on that presumption, which we  
5       have to, because that is the evidence in this case,  
6       that white drivers and black drivers are presumed to  
7       commit traffic infractions at roughly the same rate,  
8       and then we look at the blunt statistics that  
9       77 percent of all people that the Richmond Police  
10      Department stop are black drivers, and then we look at  
11      even if we are saying, okay, fine, there is some  
12      activities that happens and maybe that explains a  
13      little bit more that maybe because there is more  
14      surveillance in certain areas, it doesn't explain why  
15      more black drivers are stopped in the white part of  
16      town. But it just doesn't. There is no way to get  
17      around that but to look through the lens of race.

18           THE COURT: I understand what you are saying. I  
19      have been sitting up here for 12 years with, you know,  
20      dozens if not hundreds of young African-American men  
21      who get stopped for stuff that happens all the time in  
22      white areas, without a concomitant number of arrests.  
23      I'm sorry to disturb your testimony. Go ahead. Sounds  
24      like --

25           MS KOENIG: I am pretty much done.

Chiles - direct

74

1 THE COURT: You are pretty much done?

2 MS KOENIG: On my direct examination of Dr.

3 Chiles.

4 THE COURT: How is he going to tie this into  
5 current police activity?

6 BY MS KOENIG:

7 Q Dr. Chiles is a historian, Your Honor. So,  
8 Dr. Chiles, do you have, when -- let's do this.

9 When you, over the course of your research did you  
10 contact the Richmond Police Department trying to get  
11 ahold of crime statistics?

12 A Yes. Years ago. Not just crime statistics, but  
13 correspondences from say the police department and City  
14 Council and things that, things of that nature. So  
15 just general police records that are available to the,  
16 to historians and researchers, yes.

17 Q Did that include more recent time frames than what  
18 we have talked about today?

19 A Absolutely.

20 Q Were you able to obtain such information?

21 A No.

22 Q Did anybody give you a reason as to why you  
23 couldn't obtain such information?

24 A Yes. I was told, and I do not have the officer's  
25 name, but I was told that the Richmond Police

1 Department are not required to keep data of that sort.  
2 So they don't, or at least didn't. And I was told to  
3 contact the state archives to see if they have  
4 anything. So I did and the State Archives had nothing  
5 either. Yes. That --

6 THE COURT: What were you asking them for?

7 THE WITNESS: Just any police records that could  
8 be available to researchers from the 1980s, 1990s,  
9 early 2000s to -- because that is what I focus on in my  
10 own research that I publish. I was told we don't have  
11 any of that data.

12 THE COURT: You don't have any records about like  
13 the number of people they arrest? Is that what you  
14 ever saying?

15 THE WITNESS: That is what I was told, yes.

16 I don't have -- we don't have that data, and we  
17 are not required to keep it. So you should probably  
18 contact the State Archives. So I did, and I struck out  
19 there as well.

20 THE COURT: Okay.

21 BY MS KOENIG:

22 Q And so was your ability then to find more recent  
23 data is very limited because of that?

24 A Yes. It definitely dissuaded me. I was, I am  
25 not -- this is -- I am not going to pursue this, this

1 specifically as a topic any further. So I didn't.

2 Q Going back again to defendant's exhibit R 2 and to  
3 our discussion about the history of race relations in  
4 the Richmond Police Department. Are you able to draw  
5 any conclusion or tell us what your summary essentially  
6 of what your knowledge tells us about residential  
7 segregation in Richmond succinctly, and the over  
8 policing of black residents by Richmond Police  
9 Department.

10 A Yes. So they were a hundred percent connected and  
11 they are connected in some this way. Black Richmonders  
12 throughout history have had negative interactions with  
13 Richmond-based institutions, whether that is the City  
14 council, police -- the police are just an extension of  
15 that -- because of segregation, because of forced  
16 segregation, and also past patterns of just discontent  
17 between the police department and black people. There  
18 has been a historical discontent between them. And I  
19 don't believe that that just ends when a black police  
20 chief is sworn in, I believe in 1989, first black  
21 police chief, or black officers were hired.

22 Institutions develop character over time. They develop  
23 patterns of behavior and that doesn't stop the second  
24 that a new person is brought in or some new people are  
25 brought in. Also relationships --

## Chiles - cross

77

1 THE COURT: I am not sure that his area of  
2 expertise goes this far.

3 MS KOENIG: Thank you, Dr. Chiles. The Government  
4 may have some questions for you?

5 THE COURT: We need to take a recess.

6 (Recess was taken)

7 All right. Let's wait until Mr. Moore gets back  
8 in.

9 Come back up to the stand, sir, Dr. Chiles.

10 CROSS EXAMINATION

11 THE COURT: All right. Cross examination,  
12 Mr. Gibbons?

13 BY MR. GIBBONS:

14 Q Good morning, Dr. Chiles.

15 A Good morning.

16 Q You wrote last year in your Here We Go Again  
17 article "That Richmond is 'a City seeking to end it  
18 complicity with American racism,'" didn't you?

19 A Yes.

20 Q And Richmond has changed quite a bit in the last  
21 fifty years?

22 A Yes.

23 Q And in fact it is becoming far less segregated,  
24 maybe let me rephrase that, far less racist?

25 A Yes.

1 Q And significant progress has been made, especially  
2 since 1977 when African-Americans were more fully  
3 involved in City Government?

4 A Progress as in what?

5 Q Racial progress.

6 A As in what exactly? Like, I mean, I want to  
7 answer the question.

8 Q Sure. Well being of African-Americans in  
9 Richmond.

10 A In like what?

11 Q I will move on.

12 A Thank you.

13 Q And over the course of the last 50 years the  
14 distribution of where people live in Richmond,  
15 specifically races living in Richmond has changed  
16 significantly?

17 A Yes.

18 Q So, before the 1960s blacks were concentrated in  
19 the City's core in the east end?

20 A Yes.

21 Q And since then blacks predominantly in the  
22 northern part of City center, eastern part of the City  
23 center and the southern part of the City center,  
24 correct?

25 A Say that last part again. I am sorry.

1 Q Blacks have now been dispersed --

2 A Yes. Sorry, I'm sorry, yes.

3 Q -- into the north, east and south parts of  
4 Richmond; is that correct?

5 A Yes.

6 THE COURT: Well, I think he testified that  
7 dispersal of blacks to this area occurred over time.

8 MR. GIBBONS: Yes, Your Honor.

9 THE COURT: Okay.

10 BY MR. GIBBONS:

11 Q In fact, you wrote in your masters thesis that the  
12 percentage Richmond population fell below 15 percent in  
13 the 1990s?

14 A Population.

15 THE COURT: Of what?

16 MR. GIBBONS: White people in Richmond, Your  
17 Honor.

18 THE COURT: Well, fell below 15?

19 MR. GIBBONS: Fifteen percent.

20 BY MR. GIBBONS:

21 Q Let's look at your thesis at page 117.

22 THE COURT: What number is that?

23 MR. GIBBONS: I don't know what the defendant's  
24 exhibit number is.

25 MS KOENIG: It is exhibit number --

1           THE COURT: I can't hear you.

2           MS KOENIG: Sorry.

3           THE COURT: Is that 11?

4           MR. GIBBONS: Yes, Your Honor, defendant's exhibit  
5         11.

6           THE WITNESS: Is it 115?

7           MR. GIBBONS: 117, I'm sorry. Looking at last two  
8         lines of page 117.

9           THE WITNESS: Yes, I guess I did.

10          THE COURT: Well, what you meant to say was  
11         45 percent, isn't that right?

12          THE WITNESS: Yes. Yes. I mean --

13          THE COURT: That is a typographical error. Cross  
14         examination is more useful than that.

15          MR. GIBBONS: Sure, Your Honor. So just to be  
16         clear you your masters thesis says, as of 2014 whites  
17         made up 44 percent of City residents. This rise from  
18         below 15 percent in the 1990s?

19          THE COURT: It is a typographical error. He  
20         obviously meant to say 45 percent. Move on.

21         BY MR. GIBBONS:

22         Q         So what was the percentage of blacks?

23          THE COURT: Let's move on.

24          MR. GIBBONS: I'm sorry, Your Honor. I just  
25         wasn't sure what the percentage is.

1           THE COURT: Well, he meant to say below  
2    45 percent; is that right, Dr. Chiles?

3           THE WITNESS: Yes. So there is one thing I don't  
4    have the, what do you call it, the census data in front  
5    of me, so I can't say definitively.

6    BY MR. GIBBONS:

7    Q    So if it was 44 percent in 2014, and that was a  
8    rise from what it was in 1990s, I'm trying to  
9    understand what it was in the 1889s.

10   A   I don't have that information directly in front of  
11   me.

12   Q    Okay.

13           But since 2010 there has been a gentrification  
14   movement of whites moving back into the City of  
15   Richmond?

16   A   Yes. Absolutely.

17   Q   That wouldn't have been reflected in defendant's  
18   exhibit R 2 that relied on the census data from 2010?

19   A   It should have been reflected. It should have  
20   been yes.

21   Q   So when you talk in your expert report on page  
22   four about a gentrification movement of 2010s, that  
23   would reflect gentrification from 2010 to 2020?

24   A   Roughly speaking, yes.

25   Q   Is that gentrification movement occurring up until

1 2022?

2 A Yes. Absolutely.

3 Q So census data from 2010 wouldn't reflect a  
4 significant influx of white residents that occurred  
5 from 2010 to 2022?

6 A I guess it depends on when it is collected.

7 Q As whites have moved back into Richmond that has  
8 changed the distribution of whites in the City of  
9 Richmond?

10 A Yes, absolutely.

11 Q So if RPD was trying to align precinct boundaries  
12 with where the defendant races congregate would be  
13 somewhat of a moving target; is that correct?

14 A Say that question again. I am sorry.

15 Q If RPD was trying to align precinct boundaries  
16 with racial residential boundaries it would be a moving  
17 target because the demographics of Richmond are  
18 constantly changing?

19 A Not constantly changing enough, no. Again, since  
20 the '70s, I mean you can look at the map, it says 2010  
21 map, which was previously shown, the majority of black  
22 people still live in the same areas that they did  
23 prior, right? So, yes, there is some dispersement,  
24 there are some blacks who have moved to the suburbs,  
25 there are some blacks who have moved to the west end,

1     but by and large these areas are still identifiably  
2     that of same race.

3     Q     Again, there has been a significant influx of  
4     white since 2010 not reflected in the census data that  
5     would change those boundaries?

6     A     Yes, significant influx of whites, but that  
7     doesn't change the -- that has not, at least from the  
8     data that we have. I believe that the dot map data for  
9     2020 hasn't been released. I tried to get it for my  
10    book and I can't secure it from anyone. But, again,  
11    the amount of white distribution throughout the City  
12    has not changed the racial integrity of the City at  
13    all, at least based upon where the majority of the  
14    races of people live.

15    Q     You don't have an idea what precinct boundaries  
16    looked like in 1977?

17    A     In 1977, no, I do not.

18    Q     You don't have any idea what changes, if at all,  
19    have been made to the precinct boundaries since '77 to  
20    the present?

21    A     I have seen precinct boundary maps that were shown  
22    to me at a previous date. I don't have -- I can't map  
23    it out for you, but I have seen it.

24    Q     The current precinct maps?

25    A     Yes.

1 Q The historical precinct map you have no idea?

2 A The historical precinct maps, I have not looked at  
3 those, no.

4 Q So you don't know one way or the other if the  
5 precinct boundaries in the past have tracked racial  
6 boundaries?

7 A I can't speak to that at all, no.

8 Q You don't have any evidence that Richmond has ever  
9 changed a precinct boundary in response to shifting  
10 racial demographics in Richmond?

11 A Police precinct map, no.

12 Q And RPD is not involved in residential  
13 segregation; is that correct?

14 A As far as actually segregating people, no, they  
15 are not actually segregating anyone.

16 Q And they haven't been for a very long time, if at  
17 all?

18 A Since -- no, they are not. They are not, you  
19 know, there is no Jim Crow laws for them to enforce on  
20 the books, if that is what you are asking. Then, no.

21 Q So just to make the point, so whatever racial  
22 segregation that exists within Richmond isn't a choice  
23 of individuals, market forces, real estate market, and  
24 decision by policy makers external to RPD.

25 A To a large extent yes.

1 Q You are not familiar with Richmond City crime  
2 rates, are you?

3 A I have seen crime data from the '80s. I secured  
4 some from the state, state police department in 2015,  
5 2016, sorry, secured some. I have seen it, but I am  
6 not familiar with it. I can't spit out facts for you,  
7 no.

8 Q And wouldn't know one way or another if RPD is  
9 deploying its police report in response to crime rates  
10 and calls for services?

11 A No.

12 I don't have access so that either.

13 Q I want to talk to you about a quote in your  
14 report. You wrote -- let me get the page number here.  
15 This is pages 11 and 12 in your report.

16 MS KOENIG: If I could approach and show him a  
17 copy of the report.

18 THE COURT: Go get it from her.

19 THE WITNESS: Yes.

20 BY MR. GIBBONS:

21 Q So the last few words of page 11 and going to page  
22 12?

23 A Yes.

24 Q You wrote, "With plans to repopulate the City with  
25 monied whites in view of the suburban sprawl in the

1 post World War II period the new police strategy as  
2 dictated by black political leaders insure that it will  
3 'that that' it will not take long for the neighborhoods  
4 to recognize the increased police presence and more  
5 aggressive enforcement" in the City's blackest area.

6 Is that what you wrote?

7 A Yes, I wrote this.

8 Q So just to be clear, you interpret the effort to  
9 increase crime enforcement in high crime areas as an  
10 attempt to repopulate the City with monied whites?

11 A Yes, I do equate the two. In the 1980s  
12 specifically because, with the downtown redevelopment  
13 plans, the revitalization plans, the Sixth Street  
14 Market Place, that is the one that had the most  
15 activity on the crime front, business leaders were  
16 responding to the City and to non profit organizations,  
17 Richmond Renaissance being one, crime is a problem in  
18 Richmond. And that, that, these reports that are at  
19 VCU today, you can go look at them, those complaints  
20 about crime correlate directly with urban  
21 revitalization in the 1980s. So I would say that is  
22 not by happenstance. That more crime enforcement  
23 happens in black neighborhoods just as the City is  
24 desperately trying, one building, new infrastructure to  
25 recruit whites suburbanites back to the City, to be

1 residents and more so consumers.

2 Q Sure. And you didn't consider the possibility at  
3 all that crime enforcement is increasing in these high  
4 crime areas so that the minority is living in those  
5 areas aren't deprived of the benefit of law  
6 enforcement?

7 A I didn't rule that out, no.

8 Q You didn't even consider that. You didn't put  
9 that in your expert report?

10 A No, the report, the report, the report that I  
11 wrote, it was designed to investigate is there a  
12 connection between racial segregation and the  
13 relationship between black people and the police  
14 department. So, based upon what I got, that is what I  
15 put in the report.

16 Q So that alternate explanation for the phenomenon  
17 that is occurring wasn't within what you are were  
18 trying to say in the report, so you didn't include it?

19 A Not trying to say, but more so making the  
20 connection between what is the relationship  
21 historically between black people in Richmond and  
22 segregation and the police. Is there a connection  
23 between the three? Between the three. And this is the  
24 connection that I found. Wasn't that I was trying to  
25 say this, it was, this is what the evidence showed,

1 revealed itself to be.

2 THE COURT: I don't think it's an alternate  
3 explanation. An additional reason.

4 BY MR. GIBBONS:

5 Q Okay.

6 A I go back to the report, again on page 12, a few  
7 lines down. You wrote, "This late 20th century  
8 development" and my parenthetical is increased  
9 policing, "was tied directly to RPD history of being  
10 sicked on black people as Richmonders, both new and  
11 old, long understood this to be their primary function  
12 above all else."

13 Did I read that correctly?

14 A I'm sorry. You said page 12?

15 Q Yes.

16 A Is that in the conclusion?

17 Q The second to the last sentence before the  
18 conclusion.

19 Starting with "This late 20th century  
20 development?"

21 A Yes, I see it. Got it. What about it?

22 Q So you state that new and old Richmonders have  
23 long understood the primary purposes of RPD to be  
24 sicked on black people. Is that correct?

25 A Yes.

1 Q Who are these new and old Richmonders who  
2 understand this?

3 A The ones that were reflected in Dr. Cei's  
4 dissertation, as well as the Richmonders who lived in  
5 the mid to late '20th century, the ones who were  
6 calling for more policing in the 1980s. And again,  
7 like I said, Richmonders in Dr. Cei's dissertation who  
8 were, who were, who lived during the 1700 and 1800's,  
9 so that is who I considered new and old.

10 THE COURT: So say that again.

11 You say that people, new and old people both  
12 considered the purpose of the police to be essentially  
13 hassle African-American people; is that what you are  
14 saying?

15 THE WITNESS: Yes. That is what I saw in  
16 Dr. Cei's report.

17 THE COURT: Do you think that is true? That that  
18 is what people see the purpose of police are?

19 THE WITNESS: Today?

20 THE COURT: Well --

21 THE WITNESS: Or back then?

22 THE COURT: Well, I can only speak as somebody who  
23 lived through that entire era. Do you think that that  
24 is a widely held belief that police exist to make life  
25 difficult for African-American people?

1           THE WITNESS: Well, no, that is not their primary  
2 function. I don't think that is what people back  
3 then -- people, so, because, again, this is a lot of  
4 time we are talking about, about back then. Police  
5 were designed to protect and serve, right. However, in  
6 Richmond, at least in Dr. Cei's dissertation and other  
7 newspaper sources, and some archival sources I was able  
8 to look at, at the Virginia Museum of History and  
9 Culture showed that there was an understanding that  
10 police were to work to surveil black areas, were to  
11 surveil black people, like -- again, I am not coming to  
12 that conclusion independently. Someone else came to  
13 that conclusion looking at more data than I had access  
14 to. So, that is why I said it.

15 BY MR. GIBBONS:

16 Q Dr. Cei's dissertation was published in 1975?

17 A Yes. I believe it covered years all the way up  
18 until right around the year that he defended it.

19 Q So 1737 to 1974?

20 A Yes. There you go.

21 Q How about the last 45 years? New and old  
22 Richmonders believed that RPD'S primary purpose is to  
23 be sicked on black people in the last 45 years?

24 A Well, based upon what I saw in the '70s through,  
25 excuse me, the late '60s into the 80's, a lot of those

1       mentalities didn't necessarily go away. At least at  
2       that time period. I can't speak to right now in the  
3       present. I can't speak to even the '90s because I  
4       didn't write about it because I don't have the data to  
5       write about it, so I don't feel comfortable speaking as  
6       an authority on it.

7       Q       Sure. The defendant was born in 1987.

8       A       Okay.

9       Q       Anything in his life time that speaks to that  
10      point? Do you have any sources or data from the  
11      defendant's entire lifetime?

12      A       Beyond 1989 I don't have anything. That is why I  
13      didn't write about it.

14      Q       That is true not just for this one specific point.  
15      That is true of your testimony generally, since 1989  
16      you really can't point to any data to demonstrate some  
17      kind of racial impact of policing or problems you are  
18      discussing.

19      A       No.

20           THE COURT: Well, is there a phenomenon that once  
21      people start to do something they pretty much keep  
22      doing it?

23           THE WITNESS: Instructional character, yes. Right  
24      before recess I was getting to that. Institutions are  
25      made up of people. People have habits. And

1       institutions develop a character, develop a pattern of  
2       behavior and a pattern of doing things. Again, that  
3       doesn't stop just because one -- more people come in.  
4       Think about the 1977 election when black leaders get  
5       elected to run the City. Their mentality about running  
6       the City in large part was the same as the old. We  
7       need to recruit white suburbanites back to the City.  
8       The previous administrations had done it through  
9       annexation, done it through building malls along the  
10      perimeter City. But the point is the agenda was still  
11      the same in large part. So that is because that  
12      institution, that being City council, it developed a  
13      character over time. That even though there are new  
14      people in that role, or in that position, it is still  
15      active in that, so active the way it acted years  
16      before. Not all the way through. But in many ways  
17      they still did it. So institutional character, yes,  
18      that is a thing.

19           THE COURT: And when people come and join an  
20      institution the customs and mores of that instruction  
21      that they learned they learn from people who were there  
22      before them.

23           THE WITNESS: Yes, absolutely.

24           THE COURT: So, if there was a sense that we need  
25      to clean up crime in black communities, focus our

1       efforts there, that is a belief that is passed down  
2       from captains to lieutenants to sergeants and new  
3       patrol officers.

4           THE WITNESS: I would assume so.

5           THE COURT: Well, don't assume anything. I am  
6       asking if that is your opinion.

7           THE WITNESS: Yes, that is my opinion, yes. I am  
8       not sure that that is a historical opinion.

9           MR. GIBBONS: I was going to say, Your Honor, it  
10      seems more of an intuition that some kind learned or  
11      trained observation.

12          THE COURT: I tried a bunch of discrimination  
13      cases in my life, and there is a phenomenon of  
14      discrimination cases, called "similar-to-me" phenomenon  
15      in which institutions that have presumably unbiased  
16      ways of hiring people wind up hiring the same people  
17      over, and over and over again because the people who  
18      run them are most comfortable having people who are  
19      just like them, and bringing along people just like  
20      them to run the institution. So it doesn't change as  
21      dramatically as perhaps the written policy might  
22      dictate.

23          MR. GIBBONS: I think that is rebutted, Your  
24      Honor, by the massive change in City and police  
25      leadership from 1977 to the present.

1           THE COURT: Well, only, it's only rebutted to the  
2 extent that the police leadership, police leadership  
3 may not think we ought run black people out of Richmond  
4 like the old police, like the old City police. But if  
5 the police leadership continues to have the feeling we  
6 need to send massive numbers of police into black  
7 areas, that is a belief that could be passed along. It  
8 may well be that they have, they can look at the amount  
9 of crime in black areas and decided, you know, there is  
10 people over here who deserve to live here without  
11 living in an area that is highly criminal. And they  
12 say, send police officers over there. But I don't have  
13 any evidence about why the police are sent anywhere in  
14 the City right now.

15           Maybe I will at some point. But I don't right  
16 now.

17           MR. GIBBONS: Well --

18           THE COURT: I would have thought you would have  
19 called the police officer, somebody from the police  
20 department that would have said, here is why we have a  
21 lot of police over there where this poor fellow got  
22 arrested.

23           MR. GIBBONS: I think Dr. Smith testified about  
24 that extensively, Your Honor.

25           THE COURT: Dr. Smith didn't testify to anything

1 about that. Dr. Smith's main point of testimony is  
2 that you can't believe any of the numbers.

3 MR. GIBBONS: He also testified extensively that  
4 it is a common practice of law enforcement nation wide  
5 to send police where the crime is.

6 THE COURT: Well, but he didn't say anything about  
7 Richmond. All right. Go ahead. I just -- I am -- I  
8 was puzzled why we don't have the precinct, whoever  
9 makes -- probably wouldn't be good idea to call the  
10 police chief given what happened to him -- but I am  
11 just surprised that you all didn't call somebody who  
12 said, here is why we have all of these police officers  
13 over there. Because there are innocent people who live  
14 over there, and people that are trying to turn north  
15 side, Highland Park into a nice area. And the police  
16 are over there to help those people. But I don't have  
17 that.

18 MR. GIBBONS: We thought we had adequately covered  
19 that ground with Dr. Smith.

20 THE COURT: Maybe you did. I will have to go back  
21 and read all that.

22 MR. GIBBONS: Your Honor, that is why we put in  
23 these maps. Dr. Smith indicated to us privately that  
24 we put these citations in our brief and our motion to  
25 exclude Dr. Chiles, that these murder and homicide, and

1       manslaughter rates are really a decent proxy for crime  
2       rates generally. And that's why we put in the maps to  
3       show where crime is occurring in Richmond.

4           THE WITNESS: I understand that is where crime is  
5       occurring, but I don't understand -- go ahead. Doesn't  
6       seem to me that what happened to this gentleman over  
7       here was related to manslaughters in north side.

8           MR. GIBBONS: Well, we can get into that in  
9       argument.

10          THE COURT: I expect we will hear a lot about  
11       that.

12          BY MR. GIBBONS:

13          Q      Right.

14          So, Dr. Chiles, I want to go back to your report  
15       another line in your report, page 11th, the first full  
16       paragraph, the second sentence starting with "this  
17       plan, however." Opinion page 11th, full paragraph  
18       beyond that sentence.

19          A      I see it.

20          Q      You wrote in your report, "This plan, however,  
21       relied heavily on explicit calls from City businessmen  
22       for RPD to increase policing of black neighborhoods."  
23       Did I say that correctly?

24          A      Yes, you did.

25          Q      And this plan you are referring to is kind of a

1 development plan; is that correct?

2 A Yes, there were several plans or surveys that were  
3 taken throughout this time of various areas where City  
4 businessmen were interested in investing in residence  
5 -- not residence, excuse me -- properties, business  
6 properties adjacent to downtown malls. So, yes. There  
7 were several plans that came up during this time period  
8 and, yes, so that is what I was referring to.

9 Q You talk about explicit calls from City  
10 businessmen for RPD to increase their policing of black  
11 neighborhoods?

12 A Yes.

13 Q And in support of that proposition you cite some  
14 census records from Jackson Ward; is that correct?

15 A Yes.

16 Q Note 49?

17 A Yes.

18 Q If we could pull up Government 5 G, or excuse me,  
19 Government's exhibit 5.

20 Dr. Chiles, just looking through these records, is  
21 this --

22 THE COURT: That is this blue thing?

23 MR. GIBBONS: Yes, Your Honor.

24 THE COURT: Okay. Thank you.

25 BY MR. GIBBONS:

1 Q Is this the source you cited, summary file 3 G?

2 A Yes.

3 THE COURT: Hold on. What are we looking at?

4 What page on this?

5 MR. GIBBONS: Just generally, Your Honor. We are  
6 just looking through it so far.

7 THE COURT: Okay.

8 BY MR. GIBBONS:

9 Q And Government's exhibit 5 shows various figures  
10 about Jackson Ward. So that includes telephone  
11 availability, the type of heating fuel used in homes,  
12 and the type of transportation residents take to work?

13 A Yes.

14 Q And this is the main source you cited to support  
15 your quote, "Explicit calls from City businessmen for  
16 RPD to increase their policing of black neighborhoods,"  
17 is that correct?

18 A Yes.

19 THE COURT: I'm sorry. I am looking at this  
20 exhibit. Where does it say something about police  
21 business people calling?

22 MR. GIBBONS: That is my question, Your Honor.

23 THE WITNESS: Yes. So I responded. When I did  
24 get your comment back on the report initially, I did  
25 respond saying, hey, this is not one of the sources I

1 should have put in, I actually did put in -- I  
2 submitted other sources to validate that. So I pulled  
3 this directly from, or these sets of sources directly  
4 from my book, a project that I was working on at the  
5 time, and this report was also compiled in around two  
6 weeks time, so I think two or two and a half weeks  
7 time, there was a mistake with submitting this in the  
8 footnotes as opposed to other reports about crime in  
9 Jackson Ward and business leaders saying we need more  
10 patrolling and policing there. So that was a mistake.

11 Q So this is a pretty provocative claim, I believe,  
12 in your report and you clearly don't have any evidence  
13 to support that claim?

14 A I said that, I submitted that, and I said that,  
15 and sent that into her immediately after I got your  
16 response. I did give that source material up. I don't  
17 have it in front of me right now, but I did send that  
18 in.

19 THE COURT: So what he said was, you pointed out  
20 to him that this doesn't support what he says, so he  
21 sent in additional evidence.

22 MR. GIBBONS: I haven't seen any additional  
23 evidence, Your Honor.

24 THE COURT: He said he cited it to you in some  
25 sort of letter or something.

Chiles - cross

100

1 MS KOENIG: This is in ECF number 107 and page  
2 eight. This is --

3 THE COURT: All right. Well, okay. You can point  
4 that out.

5 MS KOENIG: I will do that.

6 BY MR. GIBBONS:

7 Q Dr. Chiles, since 1977 there has been pretty  
8 significant representation of African-Americans within  
9 City Government?

10 A Absolutely.

11 Q And the chief of police, not currently, but on  
12 December 5 of 2020 was African-American, correct?

13 A Yes.

14 Q Is it your testimony that all or nearly all of  
15 City leaders since 1977 have intended to discriminate  
16 against African-Americans?

17 A Have intended to discriminate? Professionally I  
18 can't speak to that. Personally I would assume no.

19 Q Is it your testimony that Henry Marsh intended to  
20 discriminate against African-Americans during his  
21 involvement with Richmond City leadership?

22 A No, he did not.

23 Q Is it your testimony Doug Wilder intended to  
24 discriminate against African-Americans during his  
25 tenure in Richmond City leadership?

Chiles - cross

101

1           THE COURT: I think it is difficult for anyone to  
2 speculate about the intention of politicians, in  
3 particular the one you just mentioned.

4 BY MR. GIBBONS:

5 Q       Same question for Tim Kaine?

6 A       Intention, no. I do not think they intended to  
7 discriminate against black people. No, I do not.

8           THE COURT: I just don't -- intent is an element  
9 of the case, you are absolutely right about that. I am  
10 not sure that the mayors of the City of Richmond are  
11 the people that -- it is hard to speculate about what  
12 they intended because, as we all know, politicians have  
13 many motives.

14           MR. GIBBONS: To lay the foundation, Your Honor,  
15 there needs to be a connection between what happened  
16 long past, the recent past, and 2020.

17           THE COURT: I see your point. The question is  
18 whether the police officers who were working when this  
19 gentleman was arrested, the police department at that  
20 time was a weapon of oppression. That is really what  
21 they are saying.

22           I mean, I think that is a tough burden to carry.

23 BY MR. GIBBONS:

24 Q       Dr. Chiles, are you aware that RPD has issued  
25 several general orders that apply to all police

Chiles - redirect

102

1 officers that forbid discrimination on basis of race?

2 THE WITNESS: I know that now. I didn't know that  
3 prior to today. No, I did not.

4 Q And are you aware --

5 THE COURT: Well, you know, I understand that  
6 orders are entered. I used to represent a lot of  
7 police departments. And I know that orders don't tell  
8 the whole story. I presided over a lot of  
9 discrimination cases of companies that have anti  
10 discrimination policies that really don't get followed.  
11 You are absolutely right, there is a paper trail that  
12 says we are not going to discriminate. That, I don't  
13 think that -- that is an element, but not the whole  
14 story. And I think -- and I don't think you are  
15 implying that.

16 MR. GIBBONS: Correct.

17 No further questions.

18 THE COURT: Okay. Thank you.

19 Do you have any brief redirect?

20 REDIRECT EXAMINATION

21 BY MS KOENIG:

22 Q Briefly, Your Honor.

23 Dr. Chiles on direct or cross examination you were  
24 asked about gentrification of Richmond since 2010.

25 A Yes.

Chiles - redirect

103

1 Q When talking about gentrification and whites  
2 moving into the City, are there specific areas that you  
3 have in mind?

4 A Yes. From what I understand the south side areas,  
5 Blackwell area, also Church Hill. South Church Hill  
6 northward. Those are places where whites are moving  
7 in, or have moved in in significant numbers.

8 So these are places that come to mind immediately.  
9 Also, some around the north side area near Virginia  
10 Union. But those are just places that have come up in  
11 the research I have done for my book projects where  
12 gentrification not only has happened but is currently  
13 happening.

14 Q When you were doing your research in the '70s  
15 about the Richmond Police Department and including  
16 looking into trying to get information from the  
17 Richmond Police Department, never came across any  
18 precinct plans or anything like that, right?

19 A No.

20 Q And in terms of asking about the other sources  
21 that you, that Mr. Gibbons was just asking about, that  
22 you provided to me once we reviewed the second motion  
23 in limine to exclude your testimony --

24 A Yes.

25 Q -- as it relates to the footnote that Mr. Gibbons

Chiles - redirect

104

1 referred to in your report --

2 A Yes

3 A -- you gave --

4 A Yes.

5 Q -- you gave to me a number of citations, right?

6 A Um hum.

7 Q Is that a "yes?"

8 A Yes.

9 Q And --

10 A I'm sorry.

11 MS KOENIG: Your Honor, this is page, or ECF 107

12 page eight.

13 So, for instance, you indicated specifically the  
14 table of reported offenses 1976 to 1980, 2nd Street  
15 area, Richmond 1980, and all of those sources that are  
16 listed in that filing, those came directly from you,  
17 right?

18 A Yes.

19 Q Okay.

20 When we are talking about the evidence that you  
21 came across in the past of when the Richmond Police  
22 Department did start targeting whites for crimes, I  
23 think you mentioned like prostitution and alcohol  
24 violations, drug violations, when whites were targeted  
25 by the Richmond Police Department, what was the

1 response?

2 A They didn't like it. They did not like it and  
3 actually wanted to scale back on police funding and  
4 supporting for the police. This happened again during  
5 the, around the turn of the century in the middle of  
6 the progressive era, at least as indicated by Dr. Cei's  
7 dissertation.

8 Q That is what happened, right --

9 A Yes.

10 Q -- the outcry resulted?

11 A Yes.

12 Q No further questions, Your Honor.

13 Thank you.

14 THE COURT: All right.

15 May this witness be excused?

16 MS KOENIG: One moment. He may.

17 THE COURT: Do you have any need to keep him,  
18 Mr. Gibbons?

19 MR. GIBBONS: No, Your Honor.

20 THE COURT: All right.

21 Dr. Chiles, thank you very much for coming today.  
22 Very interesting to hear you. And you are going back  
23 to Old Dominion today?

24 THE WITNESS: Yes, sir, I am.

25 THE COURT: Teaching a class today?

## Chiles - redirect

106

1 THE WITNESS: I canceled class. They got off  
2 lucky, but I didn't.

3 THE COURT: Well, good for them.

4 Well, have a safe trip, and thank you very much  
5 for coming.

6 THE WITNESS: Thank you very much.

7 THE COURT: Do you have any other witnesses?

8 MS KOENIG: I have none, Your Honor.

9           THE WITNESS: Does the Government have any  
10          witnesses.

11 MR. GIBBONS: No, Your Honor.

12 THE COURT: Okay. I had gotten some sort of a  
13 word from someone that you were going to have a witness  
14 today?

15 MR. GIBBONS: Well, Your Honor, we weren't sure if  
16 the maps would be stipulated to.

17 THE COURT: Okay.

18 MR. GIBBONS: So we had the Special Agent on hand  
19 to testify if a situation came in. We don't need him.

THE COURT: All right. Thank you. All right.

Well, then all the evidence is in.

22 MS KOENIG: Yes.

23 (The witness stood aside)

24 THE COURT: So, here is what I would like you to  
25 spell out for me, Ms Koenig.

1           As I read the cases you have got to prove two  
2       things. One is the discriminatory intent. And one is  
3       the discriminatory effect. And so what you have got to  
4       prove is that the way the police department works in  
5       Richmond is set up with the intent to discriminate  
6       against blacks. And as I read Judge Moon's opinion in  
7       the Johnson case he says, and there doesn't seem to  
8       have been challenged on appeal, that the percentages  
9       then show that there is discriminatory intent.

10           MS KOENIG: It's not just Judge Moon, Your Honor.  
11       So I think first going to the prong about the  
12       discriminatory effect, I do not think that that prong  
13       should be reasonably in dispute.

14           THE COURT: Okay. Let's deal with intent first.

15           MS KOENIG: I bring that up, Your Honor, because  
16       there are many many many cases that I cite in the  
17       pleadings, and several of those are Arlington Heights,  
18       International Board of --

19           THE COURT: I understand.

20           MS KOENIG: Many many cases indicate that blunt  
21       statistical evidence of racially disparate impact may  
22       be sufficient to prove discriminatory intent of an  
23       equal protection claim.

24           THE COURT: So we have got the -- that is your  
25       evidence of the intent, and then the effect are things

1 like, it seems to me like you are relying pretty much  
2 on the same evidence to show the effect.

3 MS KOENIG: That is why I want to go through the  
4 statistical evidence first, Your Honor. We know that  
5 77 percent of all of the Richmond Police Departments  
6 traffic stops from July 1st of 2020 through December 6,  
7 2020 were of black drivers, which means black drivers  
8 are 5.13 times more likely to be stopped than white  
9 drivers. We know that it is statistically significant  
10 that black drivers are going to be arrested and  
11 searched more often than expected by chance than white  
12 drivers. And those findings are consistent with the  
13 Virginia Department of Criminal Justice Services own  
14 findings. As well as what RTAP found of the Richmond  
15 Police Department data in 2017 and 2018. That  
16 specifically found that 75 percent of all people that  
17 the Richmond Police Department arrested during traffic  
18 stops were black. Meaning that black drivers were  
19 30.7 percent more likely to be arrested as a result of  
20 a traffic offense than a white driver.

21 And that was consistent with Dr. Smith's, the  
22 Government's own expert's report of data analysis from  
23 2000. So all the evidence that we have from the last  
24 20 years, 20 some years, indicates that black drivers  
25 will be stopped by the Richmond Police Department at

1       egregious rates well and above what their percentages  
2       in the population.

3           THE COURT: Okay. Let me ask you this question.  
4       Suppose Mr. Moore instead of just doing -- what was --  
5       did stop him because of a --

6           MS KOENIG: Temporary tag.

7           THE COURT: -- temporary tag? Suppose instead of  
8       that he had been driving down Brookland Park Boulevard  
9       at 80 miles an hour and they stopped him for that.  
10      Would you be arguing in that case that because he is  
11      black and they arrested a disproportionate number of  
12      black people that I should toss out -- I should say  
13      that that stop was unlawful?

14           MS KOENIG: So it's not that -- so, Your Honor, I  
15      think the thing is that we have, as I mentioned  
16      earlier, we have no evidence whatsoever that white  
17      drivers commit less traffic infractions than black  
18      drivers. I will fully admit that I could be that white  
19      driver driving 80 miles an hour on the interstate,  
20      right, and no one pulls me over. No one. I am a white  
21      driver with a car seat in the back. Ha ha. I am not  
22      the target population for the Richmond Police  
23      Department to pull over.

24           THE COURT: Well, you know, assume for a second he  
25      committed some sort of egregious violation and was

1       pulled over for that. And that it wasn't just a bad  
2       license plate violation. Suppose it was some sort of a  
3       really bad violation and they pulled him over.

4           Would I be able to toss out his arrest that arose  
5       out of that because the police are unfair to black  
6       people?

7           MS KOENIG: Your Honor, I think this argument is  
8       the strongest when we are talking about relatively  
9       minor traffic infractions.

10          THE COURT: Your argument?

11          MS KOENIG: Yes.

12          THE COURT: I agree with that.

13          MS KOENIG: So I am not -- I don't have -- I can't  
14       say at what point in the future I might ultimately say  
15       something, but at this point, Your Honor, I think the  
16       evidence is strongest for this type of a challenge when  
17       we are talking about relatively minor traffic  
18       infractions.

19          THE COURT: Okay.

20          MS KOENIG: And so in terms of -- I think that the  
21       discriminatory effect on how traffic laws are being  
22       enforced against black drivers in the City of Richmond  
23       is apparent. And not just apparent but blatantly  
24       apparent. I think the discriminatory effect category  
25       or element is satisfied.

1           When we get to the discriminatory purpose, as  
2 numerous cases have indicated it is not easy, you know,  
3 it is, I can't, I couldn't find a case in which we have  
4 a member of the law enforcement agency that is being  
5 challenged that comes in and says, oh, yes, that is  
6 right, oh, we are discriminating against people.

7           THE COURT: So what you need to find is a law  
8 enforcement officer who has been terminated, who has  
9 been given the order. That is how these kind of things  
10 get proved.

11           MS KOENIG: Well, it doesn't have to be --

12           THE COURT: You have a Quisling in their ranks.

13           MS KOENIG: But that is not what we have, what we  
14 have to rely on here, Your Honor. When we are looking  
15 at, you know, the Iron Workers Local 86 case from the  
16 Ninth Circuit that I cited, which has since the passage  
17 of the Civil Rights Act of 1964 courts have frequently  
18 relied upon statistical evidence to prove a violation.  
19 And that is because in many cases the only avenue  
20 available of, or only available avenue of proof is the  
21 use of racial statistics to show what is happening.

22           THE COURT: Well, that is because people are smart  
23 enough not to say go arrest more blacks.

24           MS KOENIG: We are not back in the 1960's where it  
25 was freewheeling able to say whatever they wanted,

1 right? People get charged with things like that.  
2 People get found to be in violation. And what we are  
3 talking about is a civil rights problem of a different  
4 magnitude. Right. So we have blunt statistical  
5 evidence that is well sufficient in this case to show  
6 that we have met our burden under Arlington Heights to  
7 show that there is a discriminatory purpose. We also  
8 have extensive history about how residential  
9 segregation came to be in Richmond. And it is not when  
10 you line up the map, when you compare Government's  
11 exhibit, I mean defendant's exhibits 20 to defense  
12 exhibit R 2, white part is precinct three. Two, four,  
13 one are the black parts of town. We heard today, and  
14 in Dr. Chiles's report, and in the articles that he has  
15 written, that we have explicit and long-term evidence  
16 of racial animosity as to why people are living in  
17 those areas. When we look at the Mission Team, Fourth  
18 Precinct Focus Mission team has testified on July 26 of  
19 2021 at pages 23 and 24 of the transcript, they are not  
20 out to do traffic enforcement. Their job is to try to  
21 get guns and drugs off the street. But they are using  
22 minor traffic violations to pull over black drivers to  
23 search for evidence or serious criminal activity.

24 THE COURT: But the Supreme Court says they can  
25 use minor traffic violations to do that. You and I may

1 disagree with that, but they can't use to add the  
2 additional factor in of race.

3 MS KOENIG: So interestingly enough, when we look  
4 at the case in which the Supreme Court said that that  
5 is allowable, there was nothing like the body of  
6 evidence in that case that is before this court. But,  
7 what we have in this case is we have months and months  
8 and months of evidence, and years and years and years  
9 of evidence, showing that what the Richmond Police  
10 Department does is pull over black drivers. And we  
11 also know where these stops are happening is incredibly  
12 important. We have clusters of black drivers that are  
13 stopped all over the City. But clusters of white  
14 drivers are only happening in the third precinct. And  
15 then we have the clusters of black driver stops that  
16 are happening where the black and white parts of town  
17 meet together. It is so incredibly telling. Why is  
18 that happening? We have proffered an explanation that  
19 that it is policing the borders. And we don't have any  
20 other evidence to indicate that is not the case.

21 THE COURT: Well, you do. I mean, they have all  
22 of these police officers in the sections of town that  
23 Mr. Gibbons pointed out to us are where all the  
24 homicides are happening.

25 MS KOENIG: Some of the homicides are happening,

1       yes, Your Honor.

2           THE COURT: You can look at the map. It's not  
3 just some of them. You know, you don't have a lot of  
4 homicides in Windsor Farms.

5           MS KOENIG: That is why it is so important I think  
6 to look at Government's six and seven as it relates to  
7 the figures that are in defendant's exhibit two, which  
8 is Dr. Costin's report. Specifically, when you are  
9 looking at figure two and you see that -- that there  
10 are many clusters of black drivers that are stopped in  
11 the third precinct in white neighborhoods. Why? If  
12 the police are not over-patrolling those areas because  
13 there is no homicide happening, why do we have that  
14 happening? When you look at the area where the  
15 clusters are in the fourth precinct, which is where  
16 Mr. Moore was stopped, and we see that there are huge  
17 cluster areas, those are not in the same areas where  
18 these murders are happening.

19           We have these cluster maps that show us that where  
20 the clusters are often happening sometimes it is in  
21 areas that the murders are happening, absolutely, but  
22 how do we explain the ones that aren't but for race?

23           THE COURT: Go ahead.

24           MS KOENIG: What we also have is, we have I think  
25 what the Government is doing is running from the

1 obvious answer. What Dr. Smith tried to do was  
2 basically say that in no circumstance would he ever  
3 advise a law enforcement agency that they were acting  
4 in a biased manner. But if he found evidence of  
5 statistical disparities he might advise them they need  
6 to do some training to let their officers know that  
7 they need to start treating people of different races  
8 more equally.

9 So, the burden is initially on us, the defense, to  
10 show that the discriminatory purpose was a motivating  
11 factor. Here the evidence is so explicit in terms of  
12 the statistical evidence when we line that evidence up  
13 with how the precincts are mapped out, and we compare  
14 that to the racial, residential racial segregation in  
15 Richmond. So the burden then shifts to show the same  
16 decision would have resulted even had the impossible  
17 purpose not been considered. And the Government hasn't  
18 done a single thing to show that.

19 So at this point, Your Honor, I believe that you  
20 have to rule for us. The question I know The Court  
21 asked us to consider at the end of the last hearing was  
22 what would an appropriate remedy be if The Court were  
23 to make such a finding? I believe that The Court,  
24 because it's not written in stone, the Supreme Court  
25 has left the question open in Armstrong. Several

1       circuits have weighed in. Some circuits find dismissal  
2       of the indictment is appropriate. Other circuits and  
3       other district courts with have found that suppression  
4       of the evidence is the appropriate remedy. If The  
5       Court feels that a more creative remedy is appropriate,  
6       we are happy to consider that. But the remedy has to  
7       be within the context of this case.

8                 THE COURT: Right.

9                 MS KOENIG: So that is where we are. I think that  
10          the -- we have met our burden, and that The Court  
11          should so find.

12                THE COURT: Okay. Thank you. It would be a  
13          different story if somebody brought a 1983 case.

14                MS KOENIG: Correct.

15                THE COURT: Then I can enter an injunction.

16                MS KOENIG: Correct. That is not an appropriate  
17          remedy in this case.

18                THE COURT: I can't do that here. You would have  
19          thought somebody would have done that by now. Maybe  
20          somebody will try to figure that out.

21                MR. GIBBONS: So, Your Honor, let me just start  
22          before I respond to these points and get into my  
23          argument, just review the facts very briefly.

24                So within a four-hour period the Focus Mission  
25          Team sees three cars with the exact same license plate

1 number. They pull over the first, I believe it was for  
2 a defective headlight. See that the registration  
3 doesn't match the car. Give that person a warning and  
4 tell them to fix the headlight. Let them on their way.  
5 There is no search of the car as the defense has  
6 repeatedly claims, there is absolutely no search of  
7 that car.

8 THE COURT: Well, they looked in it.

9 MR. GIBBONS: But not a fourth amendment search.

10 Second stop an hour later. They see a second car  
11 with a broken window. Same exact license plate.  
12 Pulled it over. The mom says she broke the window to  
13 get into her car. She locked her kid in the car. Same  
14 license plate. Conduct is weird. Gave her a warning.  
15 No search. Sent her on her way.

16 Two hours later they see Mr. Moore, same exact  
17 license plate. And they know it doesn't belong to his  
18 car based on the two prior interactions within four  
19 hours. They attempt to initiate a traffic stop. He  
20 flees. Goes through three stop signs at a high rate of  
21 speed. Crashes his car into the curb and then flees on  
22 foot. They find the firearm.

23 So, that is the background. And when Ms Koenig  
24 says the Government has not done a single thing to  
25 rebut this legitimate law enforcement purpose. I mean

1       that is it. The police officers see a traffic  
2       violation. And if there is not just probable cause,  
3       they know that there is something wrong with this tag  
4       one way or another.

5           Attempt to issue a traffic stop, and here we are.

6           To start with, and just to reiterate, Your Honor,  
7       we have pending motions to exclude on both Dr. Costin  
8       and on Dr. Chiles. And let me talk about why that is  
9       the case, and why neither of those data or their  
10      conclusions of their testimony are reliable properly  
11      before The Court.

12           THE COURT: Well, I think the Johnston case says I  
13      can rely on the data, doesn't it?

14           MR. GIBBONS: If the data is reliable. But we --

15           THE COURT: Yes. Let me just say his explanation  
16      of the data being unreliable was hog wash.

17           MR. GIBBONS: Dr. Smith's explanation?

18           THE COURT: Yes. Dr. Smith was simply afraid to  
19      testify that the emperor has no clothes.

20           MR. GIBBONS: Talking about the Community Policing  
21      Act data or other data, Your Honor?

22           THE COURT: Yes. I Community Policing Act data.  
23        You remember he says they couldn't tell what race they  
24        were. You know, I may have been born during the day,  
25        but it wasn't yesterday.

1           MR. GIBBONS: Well, the point we are trying to  
2 make, Your Honor --

3           THE COURT: Well, I believe it was yesterday since  
4 it was my birthday. It was yesterday seventy-one years  
5 ago.

6           MR. GIBBONS: The point we are trying to make,  
7 Your Honor, is that comparing census records which are  
8 self -- race is self identified and traffic stop where  
9 race is identified by the police officer, it is just  
10 apples and oranges. I think that is what Dr. Smith is  
11 trying to say.

12          THE COURT: But he says they couldn't tell when  
13 they were issuing a ticket what race the people were.  
14 He couldn't be sure about it. We have all -- I have  
15 had -- Mr. Seibert has brought me a hundred cases where  
16 they have identified the race of people, and they don't  
17 seem to get it wrong.

18          MR. GIBBONS: Your Honor, it is somewhere -- I  
19 would have to look at the data again -- but somewhere  
20 between seven and ten percent of that data there is an  
21 unknown race checked in the Community Policing Act data  
22 for Richmond. So there is some uncertainty, I think  
23 there is some hesitation on RPD officers to make  
24 decisions in close calls. And I think that is what  
25 Dr. Smith was trying to say.

1           THE COURT: Well, go ahead.

2           MR. GIBBONS: We talked about, Your Honor, and we  
3        called Kevin Turner, who works at Virginia State  
4        Police, and Jim McDonough who works for Virginia  
5        Department of Criminal Services, they talked about the  
6        rush time line of the Community Policing Act and how  
7        quickly this was rolled out, and how haphazard the data  
8        collection in those first six months, which is the  
9        first five months of data is the data that the defense  
10      is relying on to prove that there is some kind of  
11      unexplained statistical disparity. We talked about  
12      just that the pitfalls and unreliability of data.

13           THE COURT: Well, you are going to have go far to  
14      persuade me that 77 percent of the people who are  
15      arrested were not black.

16           MR. GIBBONS: Well, the 77 percent of the data  
17      collected, that is what data shows.

18           THE COURT: Data collected, you are right.

19           MR. GIBBONS: But, Your Honor, we talked about  
20      this and Dr. Costin admitted this during cross  
21      examination, if you shift the time line to include the  
22      first full year of that data instead of picking five  
23      months of the most unreliable data the disparity  
24      drops -- let me get this right -- the percentage of  
25      blacks that were stopped drops from 77 percent to

1       68 percent; and the percentage of whites that were  
2       stopped increases from 14 to 24 percent. So if you  
3       include, if you don't cherry pick the date range then  
4       the disparity actually drops in half. And if you  
5       include the entire --

6           THE COURT: Well, still a pretty big disparity.

7           MR. GIBBONS: It is. And this is where we get to  
8       where the Fourth Circuit has repeatedly said some kind  
9       of unexplained statistical disparity without more is  
10      insufficient as a matter of law.

11          THE COURT: So what the explanation for this?

12          MR. GIBBONS: I think a partial explanation, and  
13       that one we know is occurring, is police deployment  
14       pattern. That police are being deployed to higher  
15       crime areas, which tend to be minority neighborhoods.  
16       Now, there is no evidence, again the burden is on the  
17       defense to explain these statistical disparities, there  
18       is no evidence as to --

19          THE COURT: Wait a minute. You told me that that  
20       is how these precincts were set up?

21          MR. GIBBONS: There is no evidence in the record  
22       as to how the precincts were set up.

23          THE COURT: How they assign the police officers to  
24       go out to those areas?

25          MR. GIBBONS: There is no evidence, Your Honor.

1       But Dr. Smith repeatedly testified police go where the  
2       crime is.

3           THE COURT: Well, okay.

4           MR. GIBBONS: We have these maps that show the  
5       crime is disproportionately in these minority  
6       neighborhoods.

7           THE COURT: I understand what you are saying, and  
8       that is the thing that has always bothered me about  
9       this case. I mean there are two sides to the coin  
10      here. Side one is I have been sitting here for 12  
11      years, and I have never had a young white guy come in  
12      who has got stopped or making an illegal left turn and  
13      they found drugs in his car. Never happened. But, you  
14      know, side two is you know people in those communities  
15      deserve to live in an area that is safe and to have the  
16      police try to find guns.

17           MR. GIBBONS: Right, Your Honor.

18           If could I skip ahead. I was going to talk about  
19       this later, but the Ninth Circuit in this, United  
20       States versus Turner case, and this is at 104 3d 1180,  
21       and the cite is 1185, this is a Ninth Circuit case from  
22       1897. The defense in that case made a very similar  
23       argument. If the police set up some kind of traffic  
24       stop sting operation in Beverly Hills versus south  
25       central LA they are going to get different people

1 because they don't patrol in Beverly Hills and they do  
2 patrol in south central LA. That there is some kind of  
3 over policing, there is going to be some kind of  
4 discriminatory impacts or disparities because they  
5 police in south central L A. The Ninth Circuit pretty  
6 conclusively said that is not discriminatory effect as  
7 a matter of law. In fact, they said the defendant's  
8 hypothetical, Beverly Hills versus south central LA, is  
9 an argument that the minorities of the inner city of  
10 Las Angeles must be denied the protection of law  
11 enforcement by the Federal Government because the  
12 likely subjects are likely to be minorities living in  
13 that area. So it can't be the case that enforcing the  
14 law in predominantly minority areas is a violation of  
15 the Constitution if those minority populations happen  
16 to be high crime areas. The Ninth Circuit has plainly  
17 said that is not sufficient as a matter of law.

18 So all that we have here is some kind of  
19 unexplained statistical disparity. We don't know how  
20 much of it is related to policing, how much is related  
21 to race, if at all. We just have this unexplained  
22 statistical disparity. And the Fourth Circuit in  
23 multiple cases, in fact in Hair, Venable, and Orvis  
24 have said that unexplained statistical disparity is  
25 insufficient as a matter of law.

1           THE COURT: Well, I think the explanation is sort  
2 of the opposite of why Willie Sutton robbed banks. The  
3 police go where criminals are because that is where you  
4 catch criminals.

5           MR. GIBBONS: Right. But Dr. Costin admitted on  
6 the stand that none of her work could be interpreted as  
7 causation, didn't intend to make any causative  
8 arguments. That is one of the key weaknesses of the  
9 defense case. They have done nothing to explain this  
10 statistical disparity when in fact the law requires  
11 them to do that. So we don't know one way or the other  
12 what is the cause of this naked statistical disparity.  
13 And the defense hasn't put anything in besides  
14 proffering of lawyer testimony that the police are  
15 enforcing racial boundaries, which there is no evidence  
16 of that in the record besides assertions of counsel.

17           So, again, on that point the unexplained  
18 statistical disparity, or prohibition on that is the  
19 sole evidence of effect and intent, is intended to meet  
20 Armstrong's requirement that the defense produce a  
21 similarly situated defendant. And there has been no  
22 attempt to do that, and the only evidence of that is  
23 this unexplained statistical disparity.

24           THE COURT: Well, can you address a different  
25 question for me? And it's one I addressed to Ms

1 Koenig.

2 Let's just assume for a second that I find that  
3 there is a disparity and intent, but the police see a  
4 crime happening. Is the remedy for that to toss out  
5 the charge? I mean, suppose the guy was driving down  
6 Brookland Park Boulevard at 80 miles an hour. And  
7 police caught him. Yet he happened to be a black  
8 person and the police were looking for black people.  
9 Should I toss out that indictment? I assume they are  
10 going to say no. And can you tell me why?

11 MR. GIBBONS: Well, Your Honor, I think she has a  
12 legal test correct. It is a burden-shifting argument  
13 similar to a Batson challenge. They make a prima facie  
14 case -- and we don't think that is met here -- and the  
15 burden shifts to the Government to assert legitimate  
16 non-discriminatory reasons. And The Court balances  
17 those explanations.

18 To that point, Your Honor, The Court, the Fourth  
19 Circuit said in Mason that "Where there exists an  
20 objectively reasonable basis for the officer's conduct  
21 after rigorous challenge it is even less likely that an  
22 Armstrong claim would get off the ground."

23 And then a little bit later, "Officers cannot just  
24 cease enforcement efforts where there is an objective  
25 reason to believe that there has been a violation of

1 the law."

2 An that is exactly what happened here. The police  
3 see this fake tag that they have seen three times now  
4 in the last four hours, the same officers, same shift.  
5 Are they supposed to just let this walk because of the  
6 defendant's race? I think the answer is no. That they  
7 are required to enforce the law, and in fact that is  
8 exactly what they did in this instance. And I believe  
9 answers The Court's question.

10 Let me switch gears, Your Honor.

11 THE COURT: Sure. Go ahead. Take your time.

12 MR. GIBBONS: Another important piece here, Your  
13 Honor, another failure of the defense's case and their  
14 burden is the Supreme Court in McClusky said that the  
15 party bringing the equal protection claim must show  
16 discriminatory purpose in his case. There has been  
17 absolutely no evidence to that effect. There has been  
18 no evidence connecting unexplained statistical  
19 disparities to the stop on December 5 of 2020, or  
20 historical prejudice that occurred many decades ago.

21 THE COURT: Well, I agree with you about  
22 annexation and all that stuff that happened back in the  
23 '70s. But if I find that there is still a pattern of  
24 racially-biased enforcement, are you saying that there  
25 is no evidence that the stop of this gentleman was

1 because of that?

2 MR. GIBBONS: Yes, Your Honor. There is no  
3 evidence of that. The four officers that were involved  
4 in that stop were here. They testified. They gave --  
5 this was over a year ago -- they were cross-examined,  
6 and there is no evidence of any kind of racial  
7 prejudice or anything that some kind of over policing,  
8 which we have already addressed, but over policing by  
9 itself is not a Constitutional violation. That that  
10 somehow touched this stop on December 5, 2020.

11 In fact -- this is another one of Your Honor's  
12 questions from the last, from the last hearing. You  
13 asked about mixed motives or what happens if there is  
14 kind of awareness of discriminatory impact. Or, excuse  
15 me, of disparate impact. And that is not enough under  
16 Supreme Court case law under.

17 THE COURT: You have to have intent, too.

18 MR. GIBBONS: Right. You have to not just be  
19 aware there is an impact or disparate impact, you have  
20 to intend that disparate impact to take place.

21 THE WITNESS: In this particular case.

22 MR. GIBBONS: In this particular case. There is  
23 just no evidence of that. There is no evidence that  
24 Henry Marsh and Doug Wilder, Tim Kaine, they are  
25 involved in the through line from '89 to 2020. And it

1       is just inconceivable they would permit, not only  
2       permit this but intend this to take place or allow  
3       it to take place within RPD.

4           THE COURT: Well, there is not even any evidence  
5       that Mayor Stoney intended.

6           MR. GIBBONS: That is one of the weaknesses of the  
7       defense case. There has to be connection to this case,  
8       has to be connection that there was intent in this  
9       case, and there is simply no evidence of that beyond  
10      unexplained statistical disparity.

11          THE COURT: Right.

12          MR. GIBBONS: And just, the implications of the  
13       defense's argument is massive. If it's the case that a  
14       simple unexplained statistical disparity is enough to  
15       get an indictment dismissed without further evidence or  
16       connection to this case, then any traffic stop in the  
17       City of Richmond is ineligible to proceed to  
18       indictment. Because if there is an unexplained  
19       statistical disparity here then no indictment can  
20       result from any traffic stops. And not just here in  
21       Richmond, we heard from Dr. McDonough that Richmond's  
22       unexplained statistical disparity in the DCJS report is  
23       about middle of the road in the Commonwealth. So this,  
24       that the logical import of this argument extends not  
25       just to Richmond, but throughout the Commonwealth.

1 That maybe zero traffic stops in the City or in the  
2 Commonwealth of Virginia are eligible to be proceed to  
3 indictment based on the defenses theory.

4 THE COURT: Or even to give them a ticket.

5 MR. GIBBONS: Give them a ticket, right.

6 And not just the Commonwealth of Virginia, but if  
7 you take Dr. Smith at his word that this is really a  
8 national problem that goes back decades, really no  
9 traffic stops, or no enforcement can occur where some  
10 kind of disparate impact has been identified or some  
11 kind of unexplained disparity is present.

12 THE COURT: So, what is wrong with that result if  
13 everybody, if all the stops, if there is a national or  
14 state-wide or City-wide practice of stopping  
15 African-American people, why should they be allowed to  
16 indict them? Although, the other problem with the  
17 whole case is that you are asking me to decide  
18 sociological questions that are not legal ones, or  
19 maybe they are or maybe they aren't. They say they are  
20 legal questions. I think you think they are  
21 sociological.

22 MR. GIBBONS: This is really, as Dr. Smith  
23 acknowledged on the stand, this is a problem that goes  
24 back decades and centuries. And the idea that  
25 dismissing the indictment would solve or even address

1       these long-standing and thorny problems being addressed  
2       throughout our political branches, that that would be  
3       accomplished in one courtroom in Richmond is just --  
4       making a ruling in this case, vis a vis, such a blunt  
5       instrument for the massive blame that is before our  
6       society.

7               Sorry, Your Honor. A little scatter shot.

8               THE COURT: Well, that is okay. I keep asking you  
9       questions.

10              MR. GIBBONS: Your Honor, just to go back to  
11       repeated Fourth Circuit law. The Armstrong test has  
12       been adopted in these types of cases, selective  
13       enforcement cases, and the Fourth Circuit in Hair,  
14       Mason, Ovis, Venable has created very, very high  
15       standards for this type claim to get discovery about  
16       and to succeed on. And we believe that standard has  
17       plainly not been met here, Your Honor.

18              One moment.

19              THE COURT: Take your time.

20              MR. GIBBONS: Nothing further.

21              THE COURT: Thank you very much, Mr. Gibbons.

22       Good job.

23              MS KOENIG: Your Honor, once the burden shifts to  
24       the laws, the action defender, you have to show that  
25       the same decision would have resulted even had race not

1   been considered. I don't think that we have any  
2   evidence here of that whatsoever. So what we are  
3   looking at is in terms of like the dates of the stop,  
4   like when, as this court recognized, the numbers are  
5   still incredibly high even if you look at the whole  
6   year's worth of data, but the reason that we came and  
7   stopped at December 6 of 2020 is because if I came in  
8   with additional data beyond that everybody would be  
9   screaming and yelling about the relevance of the date.

10           THE COURT: Well, that is part, one of the  
11   problems with being a lawyer.

12           MS KOENIG: Ha ha ha. So, but what we do know is  
13   we do not have any evidence about the police deployment  
14   patterns in this case. We do not have -- but what we  
15   do have is we have clear evidence about the traffic  
16   enforcement in this case. This is a selective  
17   enforcement claim, not a selective prosecution claim.  
18   And as I talked about several times in the briefing,  
19   for example in ECF number 66 at page three, footnote  
20   one, the standard is different. We don't have to show  
21   a similarly situated defendant when we are talking  
22   about a selective enforcement claim as opposed to a  
23   selective prosecution claim. They are different than,  
24   different considerations that are at play in a  
25   selective prosecution claim which we have not brought

1 here.

2       But what we have is we have a pattern, right. A  
3 pattern and a practice that all comes together  
4 especially when we look at the history that Dr. Chiles  
5 testified about.

6       It's not that the police just happened to be in  
7 high crime areas. The City designed essentially those  
8 places to be areas where you are going to stick blacks,  
9 poor people who have been deprived of everything that  
10 they otherwise would have been entitled to, and now we  
11 are going to stop them over and over again for traffic  
12 stops. This is not by happenstance. And Dr. Costin  
13 testified that it is policing borders. Not just me  
14 standing up here saying that. I wouldn't be able to  
15 make that representation. Dr. Costin testified to  
16 that. We can see it in the figures. We can see it in  
17 the evidence. And I think that one thing that The  
18 Court has to also look at is as it relates to this case  
19 we know that what ultimately happened pretty quickly  
20 within a matter of a few minutes, with the other two  
21 people that were stopped for this same license plate  
22 number, they were just let go, oh, no issue.

23       THE COURT: Well, they had the good sense to not  
24 run off.

25       MS KOENIG: Again, we are talking about the

1 initial part, right. Just the traffic enforcement part  
2 of it. Right.

3 So when we get to I think what I take from the  
4 Government's argument, this parade is that let's just  
5 keep on keeping on with what we have been doing all  
6 these years. Let's just keep over, over, over policing  
7 the blacks. Let's just let everybody do what they have  
8 been doing before. It is just so hard to fix it. It  
9 is so hard for us to try to do something that is going  
10 to help make things more equal. And that is exactly  
11 what the equal protection clause is designed to do, is  
12 to force change like it did in the '70s when the Fourth  
13 Circuit didn't want to deal, or didn't want to let  
14 Richmond just do what they had been doing all along  
15 with continued segregation at that point. When does it  
16 stop? I think it stops when we have evidence that  
17 shows us that we are really more in parity with the  
18 traffic stops that have happening. If the ramification  
19 is that someone gets pulled over for a traffic stop and you  
20 have got to find better reasons to try to cite them  
21 with a crime, so be it. Right. So be it.

22 And so what we have in this case is we are not  
23 just to just keep on keeping on. We are asking The  
24 Court to find enough is enough.

25 THE COURT: All right. Thank you.

1           Anything else, counsel, in this case? Do you all  
2 want to file more briefs in this case, or have you  
3 exhausted your supply of ink?

4           MR. GIBBONS: The government is happy with no  
5 further briefing. This has been going on for a very  
6 long time.

7           THE COURT: It has been going on for a long time,  
8 hasn't it?

9           MS KOENIG: Same here, Your Honor.

10          THE COURT: All right.

11          Well, this is it. A difficult case that raises a  
12 lot of difficult questions.

13          Much and it is brings to the forefront something I  
14 have been facing ever since I have been a judge, which  
15 is why is it that we only have stops in cars with black  
16 drivers? And I just don't get it.

17          But it also brings to the front of how do we  
18 protect the African-American community? It is a tough  
19 question.

20          Do you have anything further to add, Mr. Seibert?  
21 I haven't heard from you yet.

22          MR. SIEBERT: No, Your Honor. I would just --

23          THE COURT: Is that a VMI tie?

24          MR. SIEBERT: My alma mater.

25          THE COURT: Well, congratulations.

1           MR. SIEBERT: I was going to add, Your Honor, just  
2 I don't know if we covered this, but -- and I don't  
3 want to open up anything if Ms. Koenig had to answer,  
4 but the maps, right, I would encourage The Court to  
5 overlay that on top of the maps --

6           THE COURT: The crime maps.

7           MR. SIEBERT: The crimes maps. The murder and  
8 manslaughter, I assume The Court would do to already,  
9 but just overlay that across what Ms Koenig provided on  
10 the traffic stops. I think there is a correlation.  
11 Police officers aren't walking the beat any more. They  
12 are all in motor vehicles. So their main area is  
13 driving around looking for cars. I mean, that's how  
14 they deter crime by presence. Less likely crime to  
15 occur when they are patrolling, right. But I think  
16 it's very telling. I think, you know, Your Honor made  
17 a comment about linking the redeployment or the  
18 resource allocation. I think this answers that  
19 question. That is the only thing I would add.

20           THE COURT: Thank you, Mr. Siebert.

21           Ms Austin, do you have anything to add?

22           MS AUSTIN: No, Your Honor. Thank you.

23           THE WITNESS: Okay. Thank you. All right. Thank  
24 you all very much. And we will have to write an  
25 opinion about this thing.

1 Thank you.

2 Good job, counsel on both sides. I appreciate  
3 your good work.

4 Let's adjourn

5

**HEARING ADJOURNED**

7

THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT.

9

10 GILBERT FRANK HALASZ, OCR

11 Official Court Reporter

12

13

14

15

16

17

18

13

**index**

<b>Witness.</b>	<b>pg</b>	<b>ln</b>
Chiles - direct	8	12
Chiles - cross	78	11
Chiles - redirect	103	10